

to make such a request, please contact us for further information.

\_\_\_\_\_ The community in which the property securing the loan is located participates in the National Flood Insurance Program (NFIP). Federal law will not allow us to make you the loan that you have applied for if you do not purchase flood insurance. The flood insurance must be maintained for the life of the loan. If you fail to purchase or renew flood insurance on the property, Federal law authorizes and requires us to purchase the flood insurance for you at your expense.

- Flood insurance coverage under the NFIP may be purchased through an insurance agent who will obtain the policy either directly through the NFIP or through an insurance company that participates in the NFIP. Flood insurance also may be available from private insurers that do not participate in the NFIP.

- At a minimum, flood insurance purchased must cover *the lesser of*:

- (1) The outstanding principal balance of the loan; *or*

- (2) The maximum amount of coverage allowed for the type of property under the NFIP.

Flood insurance coverage under the NFIP is limited to the overall value of the property securing the loan minus the value of the land on which the property is located.

- Federal disaster relief assistance (usually in the form of a low-interest loan) may be available for damages incurred in excess of your flood insurance if your community's participation in the NFIP is in accordance with NFIP requirements.

\_\_\_\_\_ Flood insurance coverage under the NFIP is not available for the property securing the loan because the community in which the property is located does not participate in the NFIP. In addition, if the non-participating community has been identified for at least one year as containing a special flood hazard area, properties located in the community will not be eligible for Federal disaster relief assistance in the event of a Federally-declared flood disaster.

## **PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS**

### **Subpart A—Funding**

Sec.

615.5000 General responsibilities.

615.5010 Funding Corporation.

615.5030 Borrowings from commercial banks.

615.5040 Borrowings from financial institutions other than commercial banks.

### **Subpart B—Collateral**

615.5045 Definitions.

615.5050 Collateral requirements.

615.5060 Special collateral requirement.

615.5090 Reduction in carrying value of collateral.

### **Subpart C—Issuance of Bonds, Notes, Debentures and Similar Obligations**

615.5100 Authority to issue.

615.5101 Requirements for issuance.

615.5102 Issuance of debt obligations through the Funding Corporation.

615.5103—615.5104 [Reserved]

615.5105 Consolidated Systemwide notes.

### **Subpart D—Other Funding**

615.5110 Authority to issue (other funding).

615.5120 Purchase eligibility requirement.

615.5130 Procedures.

### **Subpart E—Investment Management**

615.5131 Definitions.

615.5132 Investment purposes.

615.5133 Investment management.

615.5134 Liquidity reserve requirement.

615.5135 Management of interest rate risk.

615.5136 Emergencies impeding normal access of Farm Credit banks to capital markets.

615.5140 Eligible investments and risk diversification.

615.5141 Association investment portfolios.

615.5142 Disposal of ineligible investments.

615.5143 Banks for cooperatives and agricultural credit banks.

### **Subpart F—Property and Other Investments**

615.5170 Real and personal property.

615.5171 Additional investments of Farm Credit Banks.

615.5172 Production credit association and agricultural credit association investment in farmers' notes given to cooperatives and dealers.

615.5173 Stock of the Federal Agricultural Mortgage Corporation.

615.5174 Mortgage-related securities issued or guaranteed by the Federal Agricultural Mortgage Corporation.

### **Subpart G—[Reserved]**

### **Subpart H—Capital Adequacy**

615.5200 General.

615.5201 Definitions.

615.5205 Minimum permanent capital standards.

615.5210 Computation of the permanent capital ratio.

615.5215 Distribution of earnings.

615.5216 Regulatory forbearance.

## Farm Credit Administration

## § 615.5010

### Subpart I—Issuance of Equities

- 615.5220 Capitalization bylaws.
- 615.5230 Implementation of cooperative principles.
- 615.5240 Permanent capital requirements.
- 615.5250 Disclosure requirements.

### Subpart J—Retirement of Equities

- 615.5260 Retirement of eligible borrower stock.
- 615.5270 Retirement of other equities.
- 615.5280 Retirement in event of default.
- 615.5290 Retirement of capital stock and participation certificates in event of restructuring.

### Subpart K—Surplus and Reserves

- 615.5330 Banks for cooperatives.

### Subparts L–N—[Reserved]

### Subpart O—Book-Entry Procedures for Farm Credit Securities

- 615.5450 Definitions.
- 615.5451 Book-entry and definitive securities.
- 615.5452 Law governing rights and obligations of United States, Federal Reserve Banks, Farm Credit banks, and Funding Corporation; rights of any person against United States, Federal Reserve Banks, Farm Credit banks, and Funding Corporation.
- 615.5453 Law governing other interests.
- 615.5454 Creation of participant's security entitlement; security interests.
- 615.5455 Obligations of the Farm Credit banks and the Funding Corporation; no adverse claims.
- 615.5456 Authority of Federal Reserve Banks.
- 615.5457 Withdrawal of eligible book-entry securities for conversion to definitive form.
- 615.5458 Waiver of regulations.
- 615.5459 Liability of Farm Credit banks, Funding Corporation and Federal Reserve Banks.
- 615.5460 Additional provisions.
- 615.5461 Lost, stolen, destroyed, mutilated or defaced Farm Credit securities, including coupons.
- 615.5462 Restrictive endorsement of bearer securities.

### Subpart P—Global Debt Securities

- 615.5500 Definitions.
- 615.5502 Issuance of global debt securities.

### Subpart Q—Bankers Acceptances

- 615.5550 Bankers acceptances.

### Subpart R—Farm Credit System Financial Assistance Corporation Securities

- 615.5560 Book-entry Procedure for Farm Credit System Financial Assistance Corporation Securities.

### Subpart S—Federal Agricultural Mortgage Corporation Securities

- 615.5570 Book-entry procedures for Federal Agricultural Mortgage Corporation securities.

AUTHORITY: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b-6, 2279aa, 2279aa-3, 2279aa-4, 2279aa-6, 2279aa-7, 2279aa-8, 2279aa-10, 2279aa-12); sec. 301(a) of Pub. L. 100-233, 101 Stat. 1568, 1608; sec. 105 of Pub. L. 104-105, 110 Stat. 162, 163-64.

## Subpart A—Funding

### § 615.5000 General responsibilities.

(a) The System banks, acting through the Federal Farm Credit Banks Funding Corporation (Funding Corporation), have the primary responsibility for obtaining funds for the lending operations of the System institutions.

(b) The System's funding operations have a significant impact upon the investment community, the general public, and the national economy in both the volume and the manner by which funds are raised. The Farm Credit Administration supervises compliance with the statutory collateral requirements for the debt obligations issued. The Chairman of the Farm Credit Administration, under policies adopted by the Board, consults with the Secretary of the Treasury concerning the System's funding activities, pursuant to section 5.10 of the Act.

[54 FR 1158, Jan. 12, 1989]

### § 615.5010 Funding Corporation.

(a) The Funding Corporation shall issue, market, and handle the obligations of the banks issued under section 4.2(b) through (d) of the Act and interbank or intersystem flow of funds as may from time to time be required, and, upon request of the banks, shall

handle investment portfolios. The Funding Corporation shall maintain accurate and timely records. The System banks shall provide for the sale of such obligations through the Funding Corporation by negotiation, offer, bid, or syndicate sale, and for the delivery of such obligations by book entry, wire transfer, or such other means as may be appropriate.

(b) The interaction of the System with the financial community shall be conducted principally through the Funding Corporation. The Funding Corporation shall be subject to regulation and examination by the Farm Credit Administration.

[54 FR 1158, Jan. 12, 1989]

**§ 615.5030 Borrowings from commercial banks.**

(a) Each System bank board, by resolution, shall authorize all commercial bank borrowings by that System bank.

(b) The Financial Assistance Corporation may borrow from commercial banks with the approval of the Farm Credit Administration.

[54 FR 1159, Jan. 12, 1989]

**§ 615.5040 Borrowings from financial institutions other than commercial banks.**

The Farm Credit banks may borrow from other financial institutions, such as insurance companies, Federal agencies, or Federal reserve banks.

[37 FR 11434, June 7, 1972, as amended at 54 FR 1151, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989]

**Subpart B—Collateral**

SOURCE: 54 FR 1159, Jan. 12, 1989, unless otherwise noted.

**§ 615.5045 Definitions.**

(a) *Cost* means the actual amount paid for any asset.

(b) *Market value* means the price at which a willing seller would sell to a willing buyer, neither under any compulsion to buy or sell.

(c) *Unpaid balance* means total principal and accrued interest owed.

(d) *Secured interbank loan* means a loan from one Farm Credit System bank to another Farm Credit System

bank, secured by assets of the borrowing Farm Credit System bank.

**§ 615.5050 Collateral requirements.**

(a) Each bank shall have on hand at the time of issuance of any notes, bonds, debentures, or other similar obligations, and at all times thereafter maintain, free from any lien or other pledge, assets consisting of notes and other obligations representing loans made under the authority of the Act, real or personal property acquired in connection with loans made under the Act, obligations of the United States or any agency thereof direct or fully guaranteed, other bank assets (including marketable securities) approved by the Farm Credit Administration, cash, or cash equivalents approved by the Farm Credit Administration, in an aggregate value equal to the total amount of notes, bonds, debentures, or other similar obligations outstanding for which the bank is primarily liable.

(b) The collateral value of eligible investments (as defined in § 615.5140) shall be the lower of cost or market value.

(c)(1) Except as otherwise provided in this paragraph, the collateral value of notes and other obligations representing loans made under the authority of any Farm Credit Act shall be the unpaid balance of such loans adjusted for any allowance for loan losses (except as provided for in § 615.5090).

(2) The collateral value of loans in process of liquidation or foreclosure, judgments, and sales contracts shall be the unpaid balance of such loans, judgments, and contracts adjusted for any allowance for losses.

(3) The collateral value of loans which have been restructured by any action, such as an extension, deferment, or partial release, shall be the new unpaid balance of the loans adjusted for any allowance for losses.

(4) The collateral value of property acquired in the liquidation of loans shall be the book value of such property adjusted for any allowance for losses.

(5) Collateral shall not include the amount of any loan that exceeds the maximum amount authorized under the Act or part 614 of these regulations.

(6) Collateral may include the collateral value of secured interbank loans,

## Farm Credit Administration

## § 615.5090

computed as provided in § 615.5050(c)(1), provided that the assets securing the loan could serve as collateral supporting the issuance of obligations under § 615.5050(a). In computing its eligible collateral, the borrowing bank shall not count the assets securing such loan.

(d) Each bank shall have procedures which will ensure that the bank is in compliance with the statutory requirements for maintenance of collateral. Such procedures shall include provisions for:

- (1) Adequate safekeeping facilities;
- (2) Methods to determine that debt instruments meet all requirements of law and regulations;
- (3) A report signed by an authorized bank officer at each regular meeting of the board of directors certifying the eligibility and the adequacy of collateral. Items to be reported will include but not be limited to the total amount of eligible collateral, amount of ineligible loans, amount of deductions, and the amount of excess collateral; and
- (4) Written procedures and practices to ensure that there will be a high degree of accuracy in protecting and accounting for the collateral.

### **§ 615.5060 Special collateral requirement.**

(a) An attorney lien certification need not be obtained at the time a note is accepted as collateral if the counsel for the bank or association has determined, in writing, that the bank or association procedures provide sufficient safeguards to ensure that a real estate mortgage loan, within the meaning of section 1.7(a) of the Act, made by the bank or association will be secured by a first lien or its equivalent on the borrower's interest in the primary real estate security. However, the note shall be withdrawn from collateral upon the expiration of 1 year from the date of the loan closing, unless, before the end of such period:

- (1) An attorney has certified that the bank or association has a first lien or its equivalent from a security standpoint in the primary real estate security for the loan; or
- (2) The bank or association has obtained a title insurance policy insuring that it has a first lien or its equivalent

from a security standpoint in the primary real estate security for the loan, and all of the following requirements are satisfied:

(i) The final policy was issued by a title insurance company that has been licensed to issue such policies by the appropriate state insurance regulatory body or bodies, has not been barred or suspended, and has been approved by the lending institution;

(ii) The standard form on which the final policy was issued has been approved by the counsel for the lending institution;

(iii) The final policy was issued for an amount at least equal to the balance outstanding on the real estate mortgage loan or, if separate policies are issued to insure separate tracts, the minimum amount insured by each policy shall bear the same ratio to the outstanding balance of the loan that the appraised value of the tract insured by that policy bears to the appraised value of all the real estate security for the loan; and

(iv) Personnel meeting written standards of training and experience in real estate title matters prescribed by the counsel for the lending institution certified in writing that:

(A) They reviewed the final policy and that the policy complies with standards prescribed by such counsel; and

(B) The final policy insures that a first lien or its equivalent from a security standpoint has been obtained on the primary real estate security for the loan.

(b) A loan participation agreement to which a System bank or association is a participant and involving a loan originated by another lender shall constitute an obligation meeting the collateral requirements of § 615.5050(a).

[54 FR 1159, Jan. 12, 1989, as amended at 59 FR 3787, Jan. 27, 1994]

### **§ 615.5090 Reduction in carrying value of collateral.**

When the bank or Farm Credit Administration determines that a loan did not conform to the requirements of the law or regulations at the time the loan was closed, such loan shall be withdrawn from collateral until the cause of ineligibility is remedied. When

a loan has been classified as a loss loan, the bank shall adjust the collateral value of the loan accordingly.

### Subpart C—Issuance of Bonds, Notes, Debentures and Similar Obligations

#### § 615.5100 Authority to issue.

The Act authorizes each bank of the System, subject to the collateral requirements of section 4.3(c) of the Act, to issue:

- (a) Notes, bonds, debentures, or other similar obligations;
- (b) Consolidated obligations, together with any or all banks organized and operating under the same title of the Act;
- (c) Systemwide obligations, together with other banks of the System; and
- (d) Investment bonds to the authorized purchasers subject to the limitations contained in the regulations set forth in subpart D.

[54 FR 1160, Jan. 12, 1989]

#### § 615.5101 Requirements for issuance.

Except as provided in section 4.2(e) of the Act, each debt obligation shall meet the following requirements:

- (a) Each debt obligation shall be issued through the Federal Farm Credit Banks Funding Corporation acting for System banks.
- (b) Each debt obligation shall be authorized by resolution of the board(s) of directors of the issuer(s). Each participating bank shall provide, in its authorizing resolution, for its primary liability on the portion of any consolidated or Systemwide obligation issued on its behalf and be jointly and severally liable for the payment of any additional sums as called upon by the Farm Credit Administration, in accordance with section 4.4 of the Act, in the event any bank primarily liable therefor is unable to pay.
- (c) Each issuance of debt obligations shall meet the collateral requirements set forth in subpart B.
- (d) Each issuance of debt obligations shall be approved by the Farm Credit Administration.
- (e)(1) Consultation with the Secretary of the Treasury required by 31 U.S.C. 9108 shall be conducted by Sys-

tem representatives and shall have occurred prior to each debt issuance.

(2) Under policies adopted by the Board of the Farm Credit Administration, the Chairman will consult with the Secretary of the Treasury on a regular basis concerning the exercise by the System of the powers conferred under section 4.2 of the Act.

[54 FR 1160, Jan. 12, 1989]

#### § 615.5102 Issuance of debt obligations through the Funding Corporation.

(a) The amount, maturities, rates or interest, terms and conditions of participation by the System banks in each issue of joint, consolidated or Systemwide obligations shall be determined by the Funding Corporation established pursuant to section 4.9 of the Act, acting for the banks of the System, subject to the approval of the Farm Credit Administration in accordance with § 615.5102.

(b) The Funding Corporation shall plan and develop funding guidelines, priorities, and objectives based upon the asset/liability management policies of the System institutions and the requirements of the market. The guidelines, priorities, and objectives shall be designed to ensure that the debt marketing responsibilities of the Funding Corporation will continue to provide flexibility for the banks and are fiscally sound.

(c) For all debt issuances conducted by the Funding Corporation, the specific prior approval of the Farm Credit Administration must be obtained prior to the distribution and sale of the obligation pursuant to section 4.9 of the Act.

[54 FR 1160, Jan. 12, 1989]

#### §§ 615.5103–615.5104 [Reserved]

#### § 615.5105 Consolidated Systemwide notes.

Consolidated Systemwide notes authorized under § 615.5100(b) shall be subject to the following provisions unless otherwise approved by the Farm Credit Administration:

- (a) Maturities shall be not less than five days nor more than 365 days.

## Farm Credit Administration

## § 615.5120

(b) Prices shall be on a discount yield basis or as determined by the Funding Corporation.

[42 FR 32227, June 24, 1977, as amended at 47 FR 28609, July 1, 1982; 54 FR 1160, Jan. 12, 1989; 60 FR 20011, Apr. 24, 1995]

### Subpart D—Other Funding

#### § 615.5110 Authority to issue (other funding).

Any Farm Credit bank may issue Farm Credit Investment Bonds directly to those eligible as set forth in § 615.5120(a). The bonds are subject to the limitations contained in the Federal Reserve Board's Regulation Q.

[43 FR 47489, Oct. 16, 1978; 43 FR 55239, Nov. 27, 1978]

#### § 615.5120 Purchase eligibility requirement.

(a) *Limitations.* Eligibility to purchase Farm Credit Investment Bonds shall be limited to members and employees of the Farm Credit banks and associations, except any bank officers, directors, and employees who are involved in setting the term or rate, to retired employees who are beneficiaries of a pension or retirement program of the Farm Credit banks or associations, and to retired employees of the Farm Credit Administration. A member of a Farm Credit association or a bank for cooperatives need not be an active borrower to be eligible. A member of any Farm Credit institution may purchase investment bonds from any of the institutions in the district which offer the purchase program. Patrons, members, employees, or stockholder of other financing institutions discounting loans with a Farm Credit Bank or agricultural credit bank or of any legal entity which is a borrower from any Farm Credit institution as such are ineligible as they are not members of a Farm Credit institution. Stock or participation certificates shall not be sold merely to qualify a party for the purchase of Farm Credit Investment Bonds. For purposes of this section "member" means a stockholder or participation certificate holder who acquired stock or participation certificates to obtain a loan, to purchase stock for investment or to qualify for

other services of the association or bank. A person who assumes a loan is not a member unless he becomes a stockholder or participation certificate holder in connection with that loan. Employee means a regular full-time employee of a Farm Credit bank or association. Retired employee means a retiree who is a direct beneficiary of a pension or retirement program of a Farm Credit bank or association or the Farm Credit Administration under civil service retirement.

(b) *Form and ownership.* Farm Credit Investment Bonds are registered bonds issued in definitive or book-entry form depending on investor preference. The registration used must express the actual ownership of an interest in the bond and will be considered by the issuing institution as conclusive of such ownership and interest. No designation of an attorney, agent, or other representative to request or receive payment on behalf of the owner or co-owner, nor any restriction on the right of the owner or coowner to receive payment of the bond or interest, except as provided in this section may be made in the registration or otherwise. Registrations requested in applications for the purchase shall be clear, accurate, complete, and conform with one of the registration provisions set forth in this section, and include the appropriate taxpayer identifying number. Registrations requested will be inscribed on the face of the bond if in definitive form or on the confirmation of investment if in book-entry form. The following provisions shall apply for registration of Farm Credit Investment Bonds:

(1) In all cases the member's name (whether a natural person, fiduciary, or legal entity) or employee's name must appear as owner of the bond.

(2) A bond may be registered in the name of a fiduciary only if the fiduciary is in fact the member.

(3) A member or employee may not use a form of registration (such as a gift to a minor, irrevocable trust, etc.) which would divest himself of ownership. However, a minor may be named as coowner or beneficiary.

(4) If a member is a natural person, a second natural person, member or non-member, may be named as coowner or

beneficiary. Coownership may not involve a fiduciary or private organization.

(5) In the coownership form the connective “or” shall serve the same purpose as “joint tenants with right of survivorship.”

[43 FR 47489, Oct. 16, 1978; 43 FR 55239, Nov. 27, 1978, as amended at 56 FR 2675, Jan. 24, 1991; 61 FR 67187, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, in § 615.5120, paragraph (a) was amended by adding the words “or agricultural credit bank” after the words “Farm Credit Bank” in the fourth sentence, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

#### § 615.5130 Procedures.

Procedures relating to issuance, pricing, payment of interest, redemption, replacement of lost or stolen bonds and other matters shall be promulgated under the authority of this regulation as operating instructions to banks and associations.

[37 FR 11434, June 7, 1972]

### Subpart E—Investment Management

#### § 615.5131 Definitions.

(a) *Absolute final maturity* means the date on which the remaining principal amount of a mortgage-backed security or asset-backed security is due and payable (matures) to the registered owner. It shall not mean the average life, the expected average life, the duration, or the weighted average maturity.

(b) *Adjustable rate mortgage (ARM)* means a mortgage-backed security that features a predetermined adjustment of the interest rate at regular intervals tied to an index.

(c) *Asset-backed security (ABS)* means investment securities that provide for ownership of a fractional undivided interest, or collateral interests, in a specific asset of a trust that are sold and traded in the capital markets. For the purposes of this subpart, all eligible ABSs shall be collateralized with either loans for the sale of automobiles (CARs) or credit card receivables (CARDs).

(d) *Asset/liability management* means the process used to plan, acquire, and direct the flow of funds through a Farm Credit bank in order to generate adequate and stable earnings and to steadily build equity, while taking reasonable and measured business risks.

(e) *Collateralized mortgage obligation (CMO)* means a multi-class, pay-through bond representing a general obligation of the issuer backed by mortgage collateral. Each CMO consists of a set of, at least, four tranches of bonds with different maturities and cashflow patterns. An accrual bond is last tranche. *Floating Rate CMO* means a CMO or REMIC tranche that pays an adjustable rate of interest that is tied to a representative interest rate index.

(f) *Federal funds* means funds sold to or bought from a federally insured depository institution or government-sponsored enterprise for 1 business day which increases or decreases that institution's reserve account of immediately available funds with a Federal Reserve Bank. *Term Federal funds* means funds sold to or bought from a federally insured depository institution or government-sponsored enterprise under a callable contract with a term to maturity of 100 days or less.

(g) *Interest rate risk* means the risk of loss resulting from the impact of interest rate fluctuations upon the net interest income and market value of equity of a bank.

(h) *Liquid investments* are assets that can be promptly converted into cash without significant loss to the investor. In the money market, a security is liquid if the spread between bid and ask prices is narrow, and a reasonable amount can be sold at those prices.

(i) *Loans* is defined as in § 621.2(a)(13) of this chapter, and is calculated quarterly (as the last day of March, June, September, and December) by using the average daily balance of loans for the quarter then ended.

(j) *Marketable investment* is an asset that can be sold with reasonable promptness at a price that reasonably reflects its fair value in an active and universally recognized secondary market.

(k) *Market value of equity* measures the impact that interest rate changes have upon the market value of the

bank's assets, liabilities and off-balance-sheet items.

(l) *Mortgage-backed securities (MBSs)* means investment securities collateralized with mortgage loans. MBSs provide for ownership of a fractional undivided interest in a specific pool of mortgages. Each MBS has a stated maturity, weighted average maturity, and coupon rate.

(m) *Negotiable certificates of deposit* means a negotiable large-denomination time deposit with a specific maturity, as evidenced by definitive or book-entry form. *Yankee certificate of deposit* means a certificate of deposit issued in the United States by the American branch of a foreign bank. *Eurodollar certificate of deposit* means a certificate of deposit denominated in United States dollars and issued by an overseas branch of a United States bank or by a foreign bank outside the United States.

(n) *Net interest income* means the difference between interest income and interest expense.

(o) *Prime commercial paper* means a secured or unsecured promissory note of a corporation with a fixed maturity of no more than 270 days that is rated A-1 or P-1 or an equivalent rating by a nationally recognized credit rating service.

(p) *Real estate mortgage investment conduit (REMIC)* means a nontaxable entity (created under the Tax Reform Act of 1986) formed for the sole purpose of holding a fixed pool of mortgages (both residential and commercial) secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(q) *Repurchase agreement* means a transaction where any Farm Credit Bank, bank for cooperatives, or agricultural credit bank agrees to purchase a security from a counterparty and to subsequently sell the same or identical security back to that counterparty for a specified price with a term to maturity of 100 days or less.

(r) *Stripped mortgage-backed securities* means securities created by segregating the cashflows from the underlying mortgages or mortgage securities to create two or more new securities, each with a specified percentage of the underlying security's principal payments,

interest payments, or combination of the two. In their purest form, stripped mortgage-backed securities represent mortgage-backed securities that have been converted into interest-only (IO) securities, where the investor receives 100 percent of the interest flows, and principal-only (PO) securities, where the investor receives 100 percent of the principal cashflows.

(s) *Residual* means a "residual" interest tranche from a CMO or REMIC security that collects any cashflows remaining from the collateral after the obligations to the other tranches have been met.

(t) *Total capital* is defined as in Subpart H—Capital Adequacy, § 615.5201(n) of this chapter.

(u) *Weighted average maturity (WAM)* means the weighted average number of months to the final payment of each loan backing a mortgage security, weighted by the size of the principal loan balances.

(v) *Weighted average life (WAL)* means the average time to receipt of principal, weighted by the size of each principal payment. Weighted average life for CMOs and mortgage-backed securities is calculated under some specific prepayment assumptions.

[58 FR 63055, Nov. 30, 1993, as amended at 59 FR 37404, July 22, 1994]

#### § 615.5132 Investment purposes.

Farm Credit Banks, banks for cooperatives and agricultural credit banks are authorized to hold eligible investments, listed under § 615.5140, in an amount not to exceed 30 percent of the total outstanding loans of such banks, for the purposes of complying with the liquidity reserve requirement of § 615.5134, managing surplus short-term funds, and for managing interest rate risk under § 615.5135.

[58 FR 63056, Nov. 30, 1993]

#### § 615.5133 Investment management.

The board of directors of each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall adopt written policies regarding the management of the bank's investments that are consistent with the Farm Credit



#### § 615.5134

Act of 1971, Farm Credit Administration regulations, and all other applicable statutes and regulations. The board of directors shall also ensure that the bank's investments are safely and soundly managed in accordance with these written policies, and that appropriate internal controls are in place to preclude investment actions that undermine the solvency and liquidity of the bank. The board of directors shall not delegate its responsibility to oversee and review the investment practices of the bank. The board of directors of each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall, on an annual basis, review these policies, as well as the objectives and performance of the investment portfolio. At a minimum, the written policy should address:

- (a) The purpose and objectives of the bank's investment portfolio;
- (b) The liquidity needs of the bank pursuant to the requirements of § 615.5134;
- (c) Interest rate risk management pursuant to § 615.5135;
- (d) Permissible brokers, dealers, and institutions for investing bank funds and limitations consistent with § 615.5140 of this subpart, and the amount of funds that shall be invested or placed with any broker, dealer or institution;
- (e) The size and quality of the investment portfolio;
- (f) Risk diversification of the investment portfolio;
- (g) Delegation of authority to manage bank investments to specific personnel or committees and a statement about the extent of their authority and responsibilities;
- (h) Controls to monitor the performance of the bank's investments and to prevent loss, fraud, embezzlement, and unauthorized investments. Quarterly reports about the performance of all investments in the portfolio shall be made to the board of directors.
- (i) Controls on investments in MBSs, CMOs, REMICs, and ABSs that are consistent with either §§ 615.5140(a)(2) or 615.5140(a)(8)(ii) of this subpart, as applicable, including parameters concerning the maximum amount of exposure to each category in the investment portfolio, minimum pool sizes, mini-

#### 12 CFR Ch. VI (1–1–97 Edition)

imum number of loans in a pool, geographic diversification of loans in a pool, maximum allowable premiums (particularly as related to CMOs, REMICs, and ARMs).

[58 FR 63056, Nov. 30, 1993]

#### § 615.5134 Liquidity reserve requirement.

(a) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall use cash and the eligible investments under § 615.5140 of this subpart to maintain liquidity sufficient to fund:

- (1) Fifty (50) percent of the bank's bonds, notes, Farm Credit Investment Bonds, and interest due within the next 90 days divided by 3;
- (2) Fifty (50) percent of the bank's discount notes due within the next 30 days; and
- (3) Fifty (50) percent of the bank's commercial bank borrowing due within the next 30 days.

(b) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall separately identify all investments that are held for the purpose of meeting its liquidity reserve requirement under this section. All investments held in the liquidity reserve shall be free of lien.

(c) The liquidity reserve requirement shall be calculated as of the last day of each month utilizing month end data.

[58 FR 63056, Nov. 30, 1993]

#### § 615.5135 Management of interest rate risk.

The board of directors of each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall adopt an interest rate risk management section of an asset/liability management policy which establishes interest rate risk exposure limits as well as the criteria to determine compliance with these limits. At a minimum, the interest rate risk management section shall establish policies and procedures for the bank to:

- (a) Identify and analyze the causes of risks within its existing balance sheet structure;
- (b) Measure the potential impact of these risks on projected earnings and market values by conducting interest

## Farm Credit Administration

## § 615.5140

rate shock tests and simulations of multiple economic scenarios at least on a quarterly basis;

(c) Explore and implement actions needed to obtain its desired risk management objectives;

(d) Document the objectives that the bank is attempting to achieve by purchasing eligible investments that are authorized by § 615.5140 of this subpart;

(e) Evaluate and document, at least quarterly, whether these investments have actually met the objectives stated under paragraph (d) of this section.

[58 FR 63056, Nov. 30, 1993]

### **§ 615.5136 Emergencies impeding normal access of Farm Credit banks to capital markets.**

An emergency shall be deemed to exist whenever a financial, economic, agricultural or national defense crisis could impede the normal access of Farm Credit banks to the capital markets. Whenever the Farm Credit Administration determines after consultations with the Federal Farm Credit Banks Funding Corporation that such an emergency exists, the Farm Credit Administration Board shall, in its sole discretion, adopt a resolution that:

(a) Increases the amount of eligible investments that Farm Credit Banks, banks for cooperatives and agricultural credit banks are authorized to hold pursuant to § 615.5132 of this subpart; and/or

(b) Modifies or waives the liquidity reserve requirement in § 615.5134 of this subpart.

[58 FR 63057, Nov. 30, 1993]

### **§ 615.5140 Eligible investments and risk diversification.**

(a) In order to comply with §§ 615.5132, 615.5134, and 615.5135 of this subpart, each Farm Credit Bank, bank for cooperatives, and agricultural credit bank is authorized to hold the following eligible investments, denominated in United States dollars:

(1) Obligations of the United States; full-recourse obligations, other than mortgage-backed securities, of agencies, instrumentalities or corporations of the United States; or debt obligations of other obligors that are fully

insured or guaranteed as to both principal and interest by the United States, its agencies, instrumentalities, or corporations;

(2) Mortgage-backed securities (MBSs), as defined by § 615.5131(l), Collateralized Mortgage Obligations (CMOs), as defined by § 615.5131(e), and Real Estate Mortgage Investment Conduits (REMICs), as defined by § 615.5131(p), that comply with the following requirements:

(i) The MBS, CMO, or REMIC shall either be:

(A) Issued by the Government National Mortgage Association or be backed solely by mortgages that are guaranteed as to both principal and interest by the full faith and credit of the United States; or

(B) Issued by and guaranteed as to both principal and interest by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation and be rated not lower than AAA (or equivalent) by a nationally recognized credit rating service;

(ii) Securities that are backed by adjustable rate mortgages, as defined by § 615.5131(b), shall have a repricing mechanism of 12 months or less tied to an index.

(iii) CMOs, REMICs, and fixed-rate MBSs shall satisfy the following three tests at the time of purchase and each quarter thereafter:

(A) The expected weighted average life (WAL) of the instrument does not exceed 5 years;

(B) The expected WAL does not extend for more than 2 years assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, nor shorten for more than 3 years assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points; and

(C) The estimated change in price is not more than 10 percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

In applying the tests of paragraphs (a)(2)(iii) (A), (B), and (C) of this section, each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall rely on verifiable information to support all of its assumptions (including prepayment assumptions)

concerning the collateral mortgages that back the security. All assumptions that form the basis of the bank's analysis of the security and its underlying collateral shall be available for review by the Office of Examination of the Farm Credit Administration. Subsequent changes in the bank's assumptions about the MBS, CMO, or REMIC, shall be documented in writing. The analysis of each security shall be performed prior to purchase, and each quarter subsequent to purchase. If at any time after purchase, a MBS, CMO, or REMIC, no longer complies with any requirement in paragraphs (a)(2)(iii) (A), (B), or (C) of this section, the bank shall divest the security in accordance with § 615.5142 of this part.

(iv) A floating-rate CMO debt class shall not be subject to paragraphs (a)(2)(iii) (A) and (B) of this section if at the time of purchase, or each subsequent quarter, it bears a rate of interest that is below the contractual cap on the instrument.

(v) The following instruments do not qualify as eligible investments for the purpose of this section:

(A) Stripped mortgage-backed securities, as defined in § 615.5131(r), including Interest Only (IO) and Principal Only (PO) classes;

(B) Inverse floating rate debt classes investments.

(vi) MBSs, CMOs, and REMICs that are issued by the Government National Mortgage Association, or are backed solely by mortgages that are guaranteed as to both principal and interest by the full faith and credit of the United States shall not be subject to restrictions on the amount that a bank may hold in its investment portfolio;

(vii) MBSs, CMOs, and REMICs that are issued or guaranteed as to principal and interest by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation shall not exceed 50 percent of the bank's total investment portfolio.

(3) Obligations of the International Bank for Reconstruction and Development (The World Bank);

(4) Bankers acceptances, not to exceed 30 percent of the bank's total investment portfolio;

(5) Negotiable certificates of deposit, as defined in § 615.5131(m), that mature

within 1 year or less, in an amount not to exceed 25 percent of the total investment portfolio of any Farm Credit Bank, bank for cooperatives, or agricultural credit bank. Any portion of a domestic or Yankee certificate of deposit that is not insured by either the Federal Deposit Insurance Corporation or the National Credit Union Administration, shall be held in a depository institution that maintains at least a rating of B/C, or its equivalent by a nationally recognized credit rating service. Eurodollar certificates of deposit that are not insured by the Federal or national government of the host country shall be held at banks maintaining a rating of B/C or better, and the country where the account is located shall receive an AAA rating (or equivalent) for political and economic stability from a nationally recognized credit rating service;

(6) Federal funds and Term Federal funds, as defined in § 615.5131(f) of this subpart, that are held either in federally insured depository institutions that maintain a rating of B/C or better, or with other government-sponsored enterprises. Federal funds and Term Federal funds shall not exceed 25 percent of the bank's total investment portfolio;

(7) Prime commercial paper, as defined by § 615.5131(o) of this subpart, shall not exceed 30 percent of the bank's total investment portfolio. In the event that the prime commercial paper is issued by a corporation located outside the United States, the country where the corporation is incorporated shall maintain a rating for political and economic stability of AAA or its equivalent by a nationally recognized credit rating service.

(8) Corporate debt obligations and ABSs, not to exceed 15 percent of the bank's investment portfolio, pursuant to the following requirements:

(i) Corporate debt obligations shall:

(A) Maintain at least a rating of AA, or its equivalent, by a nationally recognized credit rating service, and when applicable, the foreign country where the corporate debtor is incorporated shall maintain an AAA rating or its equivalent for political and economic stability;

## Farm Credit Administration

## § 615.5142

(B) Qualify as a marketable investment pursuant to § 615.5131(j);

(C) Mature within 5 years or less from the time of purchase;

(D) Not be convertible into equity securities.

(ii) Asset-backed securities, as defined by § 615.5131(c) shall:

(A) Mature within 5 years or less from the time of purchase;

(B) Maintain at least a rating of AAA, or its equivalent, by a nationally recognized credit rating service.

(9) Repurchase agreements, as defined in § 615.5131(q), collateralized by eligible investments authorized by this section that mature within 100 days or less.

(10) Full faith and credit obligations of any State, territory, or possession of the United States, or political subdivision thereof, including any agency, corporation, or instrumentality of any State, territory, possession, or political subdivision thereof, provided that the obligations:

(i) Maintain at least a rating of A, or the equivalent, by a nationally recognized credit rating service;

(ii) Mature within 10 years from the date of purchase; and

(iii) Qualify as marketable investments within the meaning of § 615.5131(j) of this subpart.

(11) Other investments, as authorized by the Farm Credit Administration, that manifest the following characteristics:

(i) A short maturity;

(ii) Qualify as a marketable investment pursuant to § 615.5131(j) of this subpart;

(iii) Maintain a high investment rating by a nationally recognized credit rating service.

(b) Except for eligible investments covered by paragraphs (a)(1) and (2) of this section, each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall not invest more than twenty (20) percent of its total capital in eligible investments issued by any single institution, issuer, or obligor.

(c) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall perform ongoing evaluations of all eligible investments held in its portfolio. Each bank shall support its evaluation with the most recent

credit rating of each investment by at least one nationally recognized credit rating service.

(d) The collateral value of eligible investments supporting System obligations shall be the lower of cost or market value.

[47 FR 12147, Mar. 22, 1982, as amended at 58 FR 63057, Nov. 30, 1993; 59 FR 22736, May 3, 1994; 61 FR 67187, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, in § 615.5140, paragraph (a)(1) was revised, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. The text remaining in effect until further notice appears below.

### § 615.5140 Eligible investments and risk diversification.

(a) \* \* \*

(1) Obligations of the United States and obligations, other than mortgage-backed securities, issued and guaranteed as to both principal and interest by an agency or instrumentality of the United States;

\* \* \* \* \*

### § 615.5141 Association investment portfolios.

Each Farm Credit Bank and agricultural credit bank shall review annually as of June 30 or December 31 the investment portfolios of every Federal land bank association, production credit association, agricultural credit association, and Federal land credit association in the district. Associations are authorized to hold eligible investments pursuant to §§ 615.5140 and 615.5174 as authorized by their Farm Credit Bank or agricultural credit bank. Each Farm Credit Bank and agricultural credit bank shall assist the associations in managing their investment portfolios to reduce interest rate risk and to invest surplus short-term funds.

[58 FR 63058, Nov. 30, 1993]

### § 615.5142 Disposal of ineligible investments.

(a) Any Farm Credit Bank, bank for cooperatives, or agricultural credit bank that holds investments that are not in compliance with § 615.5140 shall dispose of such investments within 6 months of the effective date of the final regulation unless the director of the Office of Examination approves in

writing a comprehensive written plan to comply with § 615.5140. The Office of Examination shall consider whether the proposed plan will enable the bank to dispose of impermissible investments within a reasonable period of time, without a substantial loss to the earnings or capital of the bank.

(b) Each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall dispose of investments that complied with § 615.5140 at the time of purchase, but subsequently became ineligible, within 6 months after the date that such investments became ineligible unless the director of the Office of Examination approves in writing a comprehensive written plan to comply with § 615.5140. The Office of Examination shall consider whether the proposed plan will enable the bank to dispose of impermissible investments within a reasonable period of time, without a substantial loss to the earnings or capital of the bank. Prior to the time that the investment is actually divested, the managers of the bank's investment portfolio shall report to the board of directors, at least quarterly, the status of the investment, including the conditions causing ineligibility, and divestiture plans.

[58 FR 63058, Nov. 30, 1993]

**§ 615.5143 Banks for cooperatives and agricultural credit banks.**

As may be authorized by the banks for cooperatives' or agricultural credit banks boards of directors ownership investment may be made in foreign business entities solely for the purpose of obtaining credit information and other services needed to facilitate transactions which may be financed under section 3.7(b) of the Farm Credit Act Amendments of 1980. Such an investment shall not exceed the level required to access credit and other services of the entity and shall not be made for earnings purposes. The business entity shall be deemed to be principally engaged in providing credit information to and performing such servicing functions for its members where such activities constitute a materially important line of business to its members. Also, investments must be made by a bank for cooperatives or agricultural credit bank for its own account

and not on behalf of its members. The bank for cooperatives or agricultural credit bank shall use only those services provided by the business entity as necessary to facilitate transactions authorized by section 3.7(b) of the Farm Credit Act Amendments of 1980.

[46 FR 55088, Nov. 6, 1981, as amended at 54 FR 1151, Jan. 12, 1989; 54 FR 50736, Dec. 11, 1989; 61 FR 67187, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, § 615.5143 was amended by adding the words "and agricultural credit banks" at the end of the heading; by adding the words "or agricultural credit banks" after the words "banks for cooperatives" in the first sentence; and by adding the words "or agricultural credit bank" after the words "bank for cooperatives" in the fourth and fifth sentences of the paragraph, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

**Subpart F—Property and Other Investments**

**§ 615.5170 Real and personal property.**

Real estate and personal property may be acquired, held, or disposed of by any Farm Credit institution for the necessary and normal operations of its business. The purchase, lease, or construction of office quarters shall be limited to facilities reasonably necessary to meet the foreseeable requirements of the institution. Property shall not be acquired if it involves, or appears to involve, a bank or association in the real estate or other unrelated business.

[50 FR 48554, Nov. 26, 1985. Redesignated at 58 FR 63056, Nov. 30, 1993, and amended at 60 FR 20011, Apr. 24, 1995]

**§ 615.5171 Additional investments of Farm Credit Banks.**

Farm Credit Banks may purchase nonvoting stock and participation certificates of and pay in surplus to associations in their respective districts when authorized by the bank board of directors on a case basis and approved by the Farm Credit Administration.

[56 FR 2675, Jan. 24, 1991; 56 FR 12298, Mar. 22, 1991. Redesignated at 58 FR 63056, Nov. 30, 1993]

**§ 615.5172 Production credit association and agricultural credit association investment in farmers' notes given to cooperatives and dealers.**

(a) In accordance with policies prescribed by the board of directors of the Farm Credit Bank or agricultural credit bank and each production credit association and agricultural credit association (hereinafter association(s)), such association(s) may invest in notes, conditional sales contracts, and other similar obligations given to cooperatives and private dealers by farmers and ranchers eligible to borrow from such associations.

(b) Such notes and other obligations evidencing purchases of farm machinery, supplies, equipment, home appliances, and other items of a capital nature handled by cooperatives and private dealers will be eligible for purchase as investments.

(c) The total amount which an association may invest in such obligations at any one time shall not exceed 15 percent of the balance of its loans outstanding at the close of the association's preceding fiscal year. In addition, the total amount which an association may invest in such obligations that are originated by any one cooperative or private dealer, at any one time, shall not exceed 50 percent of association capital and surplus.

(d) All notes in which an association invests shall be endorsed with full recourse against the cooperative or dealer. The association shall contact each notemaker who meets the association's credit standards to encourage him to become a borrower.

[54 FR 1158, Jan. 12, 1989, as amended at 55 FR 24888, June 19, 1990; 55 FR 38313, Sept. 18, 1990. Redesignated at 58 FR 63056, Nov. 30, 1993]

**§ 615.5173 Stock of the Federal Agricultural Mortgage Corporation.**

Banks and associations of the Farm Credit System are authorized to purchase and hold Class B common stock of the Federal Agricultural Mortgage Corporation pursuant to section 8.4 of the Farm Credit Act.

[58 FR 63058, Nov. 30, 1993]

**§ 615.5174 Mortgage-related securities issued or guaranteed by the Federal Agricultural Mortgage Corporation.**

(a) Pursuant to sections 1.5(15), 3.1(13)(A), and 7.2(a) of the Farm Credit Act, Farm Credit Banks, banks for cooperatives, and agricultural credit banks are authorized to purchase and hold mortgage-backed securities (MBSs), as defined by § 615.5131(l), collateralized mortgage obligations (CMOs), as defined by § 615.5131(e), and Real Estate Mortgage Investment Conduits (REMICs), as defined by § 615.5131(p), that are guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation, in an amount that does not exceed 20 percent of the total outstanding loans of such banks.

(b) Eligible securities under paragraph (a) of this section shall be backed by either:

(1) Adjustable rate mortgages, as defined by § 615.5131(b), that have a repricing mechanism of 12 months or less that are tied to an index; or

(2) Fixed-rate mortgages.

(c) Stripped mortgage-backed securities, as defined in § 615.5131(r) of this part, including Interest Only (IO) and Principal Only (PO) classes, and residuals, as defined by § 615.5131(s) are not eligible investments for the purposes of this section;

(d) The board of directors of each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall adopt written policies and procedures that bank managers shall follow in purchasing, holding and managing eligible mortgage-related securities that are fully guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation. Quarterly reports about the performance of all investments in securities that are guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation shall be made to the board of directors. The board of directors of each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall, on an annual basis, review these policies and procedures, as well as the performance of eligible Federal Agricultural Mortgage Corporation securities that such bank holds as an investment pursuant

to this section. At a minimum, the written policy should address:

(1) The purpose and objectives of the bank's investment in securities of the Federal Agricultural Mortgage Corporation;

(2) Parameters concerning the size, characteristics, and quality of guaranteed Federal Agricultural Mortgage Corporation securities that the Farm Credit bank shall purchase and hold. At a minimum, this policy should address:

(i) The mix of guaranteed Federal Agricultural Mortgage Corporation securities that are collateralized by qualified agricultural mortgages, rural housing loans, and loans guaranteed by the Farmers' Home Administration pursuant to 7 U.S.C. 1921 *et seq.*

(ii) Product and geographic diversification in the loans that underlie the securities;

(iii) Minimum pool sizes, minimum number of loans in each pool, and maximum allowable premiums for CMOs, REMICs, and ARMs; and

(iv) The mix of guaranteed Federal Agricultural Mortgage Corporation securities that are collateralized by either fixed-rate loans or adjustable rate loans that reprice at least annually, based on changes in a published index.

(3) Delegation of authority to manage bank investments in guaranteed securities of the Federal Agricultural Mortgage Corporation to specific personnel or committees and a statement about the extent of their authority and responsibility.

(4) Permissible brokers, dealers, and other intermediaries for conducting purchase and sale transactions involving securities that are guaranteed as to principal and interest by the Federal Agricultural Mortgage Corporation;

(5) Controls to monitor the performance of the bank's investments in guaranteed Federal Agricultural Mortgage Corporation securities for the purposes of preventing loss, fraud, embezzlement, and unauthorized investments;

(6) Management of interest rate risk in these securities pursuant to paragraph (e) of this section;

(7) Procedures to prevent losses to the capital and earnings of the bank;

(8) Procedures for the orderly sales of these securities prior to maturity.

(e) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall manage interest rate risk inherent in guaranteed mortgage-related securities of the Federal Agricultural Mortgage Corporation pursuant to the written policy that its board of directors adopts under paragraph (c)(5) of this section, subject to the following requirements:

(1) The policy of the board of directors shall establish, pursuant to the following formula, the maximum level of interest rate risk exposure that the bank shall incur from CMOs and REMICs that are backed by fixed-rate mortgages:

(i) The expected weighted average life (WAL) of the instrument;

(ii) The maximum number of years that the expected WAL of these instruments will extend assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or shorten assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points; and

(iii) The maximum change in the price of these securities due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

(2) For CMOs and REMICs that are guaranteed as to principal and interest by the Federal Agricultural Mortgage Corporation, and are collateralized by fixed-rate agricultural loans, the board of directors of each Farm Credit bank shall implement a policy, pursuant to the requirements of paragraph (e)(1) of this section, where at the time of purchase or any quarter thereafter, the interest rate risk of the security never exceeds the interest rate risk in the underlying mortgages.

(3) For CMOs and REMICs that are guaranteed as to principal and interest by the Federal Agricultural Mortgage Corporation, and are exclusively collateralized by fixed-rate rural housing loans, the board of directors of each Farm Credit bank shall not, under any circumstances, implement a policy pursuant to paragraph (d)(1) of this section where, at the time of purchase or each quarter thereafter:

(i) The expected WAL of security exceeds 10 years;

(ii) The expected WAL of the security extends by more than 4 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or shortens by more than 6 years assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points; or

(iii) The estimated change in the price of the security is more than 17 percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

(4) If at any time subsequent to purchase, a mortgage-related security that is guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation no longer complies with the interest rate risk policy that the bank's board of directors adopted under paragraph (d)(1) of this section:

(i) The portfolio managers shall report to the board of directors about the status of the investment, and the conditions that are causing excessive interest rate risk in the security. The portfolio managers shall also recommend to the board of directors a comprehensive plan to prevent loss to the bank's capital and earnings.

(ii) The board of directors of each Farm Credit bank shall adopt and implement a comprehensive policy to prevent the investment from causing loss to the bank's capital and earnings. Any amendment to the plan shall also be approved by the bank's board of directors;

(iii) Until the security is actually divested, the portfolio managers shall report to the board of directors, at least quarterly, about changes in the status of the investment, and the effect of the policy to prevent loss to the bank's capital and earnings.

(iv) All documentation regarding the formulation, adoption, implementation, and revision of the plan to prevent the security from causing loss to the bank's capital and earnings shall be available for review by the Office of Examination of the Farm Credit Administration.

[58 FR 63058, Nov. 30, 1993]

## Subpart G—[Reserved]

## Subpart H—Capital Adequacy

SOURCE: 53 FR 39247, Oct. 6, 1988, unless otherwise noted.

### § 615.5200 General.

(a) The Board of Directors of each Farm Credit System institution shall determine the amount of total capital needed to assure the institution's continued financial viability and to provide for growth necessary to meet the needs of its borrowers. The minimum permanent capital standard prescribed in § 615.5205 is not meant to be adopted as the optimum capital level in the institution's capital adequacy plan. Rather, the standard is intended to serve as a minimum level of permanent capital that each institution must maintain to protect against the credit and other general risks inherent in its operations.

(b) The Board of Directors shall establish and maintain a formal written capital adequacy plan as a part of the financial plan required by § 618.8440. The plan shall include the capital targets that are necessary to achieve the institution's capital adequacy goals as well as the minimum permanent capital standards. The plan shall address any projected dividends, patronage distribution, equity retirements, or other action that may decrease the institution's permanent capital. In addition to factors that must be considered in meeting the minimum standards, the board of directors shall also consider at least the following factors in developing the capital adequacy plan:

- (1) Capability of management;
- (2) Quality of operating policies, procedures, and internal controls;
- (3) Quality and quantity of earnings;
- (4) Asset quality and the adequacy of the allowance for losses to absorb potential loss within the loan and lease portfolios;
- (5) Sufficiency of liquid funds;
- (6) Needs of an institution's customer base; and
- (7) Any other risk-oriented activities, such as funding and interest rate risks, potential obligations under joint and several liability, contingent and off-



balance-sheet liabilities or other conditions warranting additional capital.

**§ 615.5201 Definitions.**

For the purpose of this subpart, the following definitions shall apply:

(a) *Allocated investment* means earnings allocated but not paid in cash by a System bank to an association or other recipient.

(b) *Commitment* means any arrangement that legally obligates an institution to purchase loans or securities, to participate in loans or leases, to extend credit in the form of loans or leases, to pay the obligation of another, to provide overdraft, revolving credit or underwriting facilities, or to participate in similar transactions.

(c) *Credit conversion factor* means that number by which an off-balance-sheet item shall be multiplied to obtain a credit equivalent before placing the item in a risk-weight category.

(d) *Direct lender institution* means an institution that extends credit in the form of loans or leases to eligible borrowers in its own right and carries such loan of lease assets on its books.

(e) *Government agency* means an agency of the United States Government whose obligations are explicitly guaranteed by the United States Government or their successors.

(f) *Government-sponsored agency* means agencies or instrumentalities chartered by the United States Congress to serve a public purpose whose debt obligations are not explicitly guaranteed by the United States Government.

(g) *Institution* means a Farm Credit bank, Federal land bank association, production credit association, agricultural credit association, Farm Credit Leasing Corporation, bank for cooperatives, National Bank for Cooperatives, and their successors.

(h) *Nonagreeing association* means an association that does not have an allocation agreement in effect with a Farm Credit Bank or agricultural credit bank pursuant to § 615.5210(e).

(i) *Performance-based standby letter of credit* means any letter of credit or similar arrangement that represents an irrevocable obligation to be beneficiary on the part of the issuer to make payment on any default by the account

party in the performance of a non-financial or commercial obligation.

(j) *Permanent capital* means—

(1) Current year retained earnings;

(2) Allocated and unallocated earnings (which, in the case of earnings allocated in any form by a System bank to any association or other recipient and retained by the bank, shall be considered, in whole or in part, permanent capital of the bank or of any such association or other recipient as provided under an agreement between the bank and each such association or other recipient);

(3) All surplus;

(4) Stock issued by a System institution, except—

(i) Stock that may be retired by the holder of the stock on repayment of the holder's loan, or otherwise at the option or request of the holder;

(ii) Stock that is protected under section 4.9A of the Act or is otherwise not at risk;

(iii) Farm Credit Bank equities required to be purchased by Federal land bank associations in connection with stock issued to borrowers that is protected under section 4.9A of the Act;

(iv) Capital subject to revolvment, unless:

(A) The bylaws of the institution clearly provide that there is no express or implied right for such capital to be retired at the end of the revolvment cycle or at any other time; and

(B) The institution clearly states in the notice of allocation that such capital may only be retired at the sole discretion of the board in accordance with statutory and regulatory requirements and that no express or implied right to have such capital retired at the end of the revolvment cycle or at any other time is thereby granted;

(5) Payments to, or obligations to pay, the Farm Credit System Financial Assistance Corporation to the extent permitted by section 6.26(c)(5)(G) of the Act and § 615.5210(d); and

(6) Financial assistance provided by the Farm Credit System Insurance Corporation that the Farm Credit Administration determines appropriate to be considered permanent capital.

(k) *Risk-adjusted asset base* means the total dollar amount of the institution's assets adjusted in accordance with

## Farm Credit Administration

§ 615.5210

§ 615.5210 (d) and (e) and weighted on the basis of risk in accordance with § 615.5210(f).

(l) *Standby letter of credit* means any letter of credit or similar arrangement that represents an irrevocable obligation to the beneficiary on the part of the issuer:

(1) To repay money borrowed by or advanced to or for the account of the account party; or

(2) To make payment on account of any indebtedness undertaken by the account party, in the event the account party fails to fulfill its obligation to the beneficiary.

(m) *Stock* means stock and participation certificates.

(n) *Total capital* means assets minus liabilities, valued in accordance with generally accepted accounting principles (GAAP), except that liabilities shall not include obligations to retire stock protected under section 4.9A of the Act.

[53 FR 39247, Oct. 6, 1988, as amended at 56 FR 2675, Jan. 24, 1991; 59 FR 37404, July 22, 1994]

### § 615.5205 Minimum permanent capital standards.

(a) Beginning on January 1, 1993, each Farm Credit System institution shall at all times maintain permanent capital at a level of at least 7 percent of its risk-adjusted assets.

(b)(1) During each year beginning on January 1, 1989, through January 1, 1993, each institution that does not meet the minimum permanent capital standard established in paragraph (a) of this section shall maintain a level of permanent capital of all times during such year at a level that is not less than its interim minimum permanent capital standard for such year, determined in accordance with paragraph (b)(2) of this section.

(2) The annual interim minimum permanent capital standards shall be determined for each institution in the following manner: A beginning permanent capital ratio shall be determined as of June 30, 1988. For institutions merged or consolidated after June 30, 1988, the beginning permanent capital ratio shall be determined on the basis of pro forma financial statements as of June 30, 1988. For each year between January 1, 1989 and 1993, the interim

minimum permanent capital standard shall be the beginning permanent capital ratio plus the specified percentage of the difference (shortfall) between the beginning permanent capital ratio and the minimum permanent capital standard of 7 percent. During each of the following years each institution shall maintain its permanent capital at a level equal to or greater than its interim minimum permanent capital standard, determined in accordance with the percentage of its shortfall specified below:

#### YEAR BEGINNING—INTERIM MINIMUM PERMANENT CAPITAL STANDARD

January 1, 1989—Beginning permanent capital ratio

January 1, 1990—beginning permanent capital ratio plus 25 percent of shortfall

January 1, 1991—beginning permanent capital ratio plus 50 percent of shortfall

January 1, 1992—beginning permanent capital ratio plus 75 percent of shortfall

January 1, 1993—the minimum permanent capital ratios shall be and thereafter 7 percent.

The interim minimum permanent capital standards for a new association that results from a special reconsideration under section 7.9(i) of the Act shall be the same standards as those for the association of which it was formerly a part.

### § 615.5210 Computation of the permanent capital ratio.

(a) The institution's permanent capital ratio shall be determined on the basis of the financial statements of the institution prepared in accordance with generally accepted accounting principles except that the obligations of the Farm Credit System Financial Assistance Corporation shall not be considered obligations of any institution subject to this regulation prior to their maturity.

(b) Through December 31, 1989, the institution's assets and permanent capital may be computed using the average of the most recent 3 months' balances. Thereafter, the institution's asset base and permanent capital shall be computed using average daily balances for the most recent 3 months.

(c) The institution's permanent capital ratio shall be calculated by dividing the institution's permanent capital, adjusted in accordance with paragraph (e) of this section (the numerator), by the risk-adjusted asset base (the denominator), to derive a ratio expressed as a percentage.

(d) Until September 27, 2002, payments of assessments to the Farm Credit System Financial Assistance Corporation, and any part of the obligation to pay future assessments to the Farm Credit System Financial Assistance Corporation that is recognized as an expense on the books of a bank or association, shall be included in the capital of such bank or association for the purpose of determining its compliance with regulatory capital requirements, to the extent allowed by section 6.26(c)(5)(G) of the Act. If the bank directly or indirectly passes on all or part of the payments to its affiliated associations pursuant to section 6.26(c)(5)(D) of the Act, such amounts shall be included in the capital of the associations and shall not be included in the capital of the bank. After September 27, 2002, no payments of assessments or obligations to pay future assessments may be included in the capital of the bank or association.

(e) For the sole purpose of computing the institution's permanent capital ratio, the following adjustments shall be made prior to assigning assets to risk-weight categories and computing the ratio:

(1) Where two Farm Credit System institutions have stock investments in each other, such reciprocal holdings shall be eliminated to the extent of the offset. If the investments are equal in amount, each institution shall deduct from its assets and its total capital an amount equal to the investment. If the investments are not equal in amount, each institution shall deduct from its total capital and its assets an amount equal to the smaller investment.

(2) Where a Farm Credit Bank or an agricultural credit bank is owned by one or more Farm Credit System institutions, the double counting of capital shall be eliminated in the following manner:

(i) All equities of a Farm Credit Bank or agricultural credit bank that have

been purchased by other Farm Credit institutions shall be considered to be permanent capital of the Farm Credit Bank or agricultural credit bank.

(ii) Each Farm Credit Bank or agricultural credit bank and each of its affiliated associations may enter into an agreement that specifies, for the purpose of computing permanent capital only, a dollar amount and/or percentage allotment of the association's allocated investment between the bank and the association. The following conditions shall apply:

(A) The agreement shall be for a term of 1 year or longer.

(B) The agreement shall be entered into on or before its effective date.

(C) The agreement may be amended according to its terms, but no more frequently than annually except in the event that a party to the agreement is merged or reorganized, or in the event of a reallocation pursuant to paragraph (e)(2)(ii)(G) of this section. The agreement shall include a provision addressing how the agreement will be amended if a reallocation is required by paragraph (e)(2)(ii)(G) of this section.

(D) On or before the effective date of the agreement, a certified copy of the agreement, and any amendments thereto, shall be sent to the field office of the Farm Credit Administration responsible for examining the institution. A copy shall also be sent within 30 calendar days of adoption to the bank's other affiliated associations.

(E) Unless the parties otherwise agree, if the bank and the association have not entered into a new agreement on or before the expiration of an existing agreement, the existing agreement shall automatically be extended for another 12 months, unless either party notifies the Farm Credit Administration in writing of its objection to the extension prior to the expiration of the existing agreement.

(F) In the absence of an agreement between a Farm Credit Bank or an agricultural credit bank and one or more associations, or in the event that an agreement expires and at least one party has timely objected to the continuation of the terms of its agreement, the following formula shall be applied with respect to the allocated investments held by those associations

with which there is no agreement (nonagreeing associations), and shall not be applied to the allocated investments held by those associations with which the bank has an agreement (agreeing associations):

(1) The allotment formula shall be calculated annually.

(2) The permanent capital ratio of the Farm Credit Bank or agricultural credit bank shall be computed as of the date that the existing agreement terminates, using a 3-month average daily balance, excluding the allocated investment from nonagreeing associations but including any allocated investments of agreeing associations that are allotted to the bank under applicable allocation agreements. The permanent capital ratio of each nonagreeing association shall be computed as of the same date using a 3-month average daily balance, and shall be computed excluding its allocated investment in the bank.

(3) If the permanent capital ratio for the Farm Credit Bank or agricultural credit bank calculated in accordance with paragraph (e)(2)(ii)(F)(2) of this section is 7 percent or above, the allocated investment of each nonagreeing association whose permanent capital ratio calculated in accordance with paragraph (e)(2)(ii)(F)(2) of this section is 7 percent or above shall be allotted 50 percent to the bank and 50 percent to the association.

(4) If the permanent capital ratio of the Farm Credit Bank or agricultural credit bank calculated in accordance with paragraph (e)(2)(ii)(F)(2) of this section is 7 percent or above, the allocated investment of each nonagreeing association whose capital ratio is below 7 percent shall be allotted to the association until the association's capital ratio reaches 7 percent or until all of the investment is allotted to the association, whichever occurs first. Any remaining unallotted allocated investment shall be allotted 50 percent to the bank and 50 percent to the association.

(5) If the permanent capital ratio of the Farm Credit Bank or agricultural credit bank calculated in accordance with paragraph (e)(2)(ii)(F)(2) of this section is less than 7 percent, the amount of additional capital needed by the bank to reach a permanent capital

ratio of 7 percent shall be determined, and an amount of the allocated investment of each nonagreeing association shall be allotted to the Farm Credit Bank or agricultural credit bank as follows:

(i) If the total of the allocated investments of all nonagreeing associations is greater than the additional capital needed by the bank, the allocated investment of each nonagreeing association shall be multiplied by a fraction whose numerator is the amount of capital needed by the bank and whose denominator is the total amount of allocated investments of the nonagreeing associations, and such amount shall be allotted to the bank. Next, if the permanent capital ratio of any nonagreeing association is less than 7 percent, a sufficient amount of unallotted allocated investment shall then be allotted to each nonagreeing association, as necessary, to increase its permanent capital ratio to 7 percent, or until all such remaining investment is allotted to the association, whichever occurs first. Any unallotted allocated investment still remaining shall be allotted 50 percent to the bank and 50 percent to the nonagreeing association.

(ii) If the additional capital needed by the bank is greater than the total of the allocated investments of the nonagreeing associations, all of the remaining allocated investments of the nonagreeing associations shall be allotted to the bank.

(G) If a payment or part of a payment to the Farm Credit System Financial Assistance Corporation pursuant to section 6.9(e)(3)(D)(ii) of the Act would cause a bank to fall below its minimum permanent capital requirement, the bank and one or more associations shall amend their allocation agreements to increase the allotment of the allocated investment to the bank sufficiently to enable the bank to make the payment to the Farm Credit System Financial Assistance Corporation, provided that the associations would continue to meet their minimum permanent capital requirement. In the case of a nonagreeing association, the Farm Credit Administration may require a revision of the allotment sufficient to enable the bank to make the payment to the Farm Credit System Financial

Assistance Corporation, provided that the association would continue to meet its minimum permanent capital requirement. The Farm Credit Administration Board may, at the request of one or more of the institutions affected, waive the requirements of this paragraph (e)(2)(ii)(G) if the Board deems it is in the overall best interest of the institutions affected.

(3) A Farm Credit Bank or agricultural credit bank and a recipient, other than an association, of allocated earnings from such bank may enter into an agreement specifying a dollar amount and/or percentage allotment of the recipient's allocated earnings in the bank between the bank and the recipient. Such agreement shall comply with the provisions of paragraph (e)(2) of this section, except that, in the absence of an agreement, the allocated investment shall be allotted 100 percent to the allocating bank and 0 percent to the recipient. All equities of the bank that are purchased by a recipient shall be considered as permanent capital of the issuing bank.

(4) A bank for cooperatives and a recipient of allocated earnings from such bank may enter into an agreement specifying a dollar amount and/or percentage allotment of the recipient's allocated earnings in the bank between the bank and the recipient. Such agreement shall comply with the provisions of paragraph (e)(2) of this section, except that, in the absence of an agreement, the allocated investment shall be allotted 100 percent to the allocating bank and 0 percent to the recipient. All equities of a bank that are purchased by a recipient shall be considered as permanent capital of the issuing bank.

(5) Where a bank or association invests in an association to capitalize a loan participation interest, the investing institution shall deduct from its total capital an amount equal to its investment in the participating institution.

(6) The double counting of capital between the Leasing Corporation and its owner institutions shall be eliminated by deducting an amount equal to their investment in the Leasing Corporation from their total capital.

(7) Each institution shall deduct from its total capital an amount equal to any goodwill acquired after May 12, 1988. Beginning on January 1, 1993, each institution shall deduct from its total capital all goodwill, whenever acquired.

(8) To the extent an institution has deducted its investment in another Farm Credit institution from its total capital, the investment may be eliminated from its asset base.

(9) Where a Farm Credit Bank and an association have an enforceable written agreement to share losses on specifically identified assets on a predetermined quantifiable basis, such assets shall be counted in each institution's risk-adjusted asset base in the same proportion as the institutions have agreed to share the loss.

(f) The risk-adjusted asset base (denominator) shall be determined in the following manner:

(1) Each asset on the institution's balance sheet and each off-balance-sheet item, adjusted by the appropriate credit conversion factor in paragraph (f)(3) of this section, shall be assigned to one of five risk categories in accordance with this section. The aggregate dollar value of the assets in each category shall be multiplied by the percentage weight assigned to that category. The sum of the weighted dollar values from each of the five risk categories shall comprise the denominator for computation of the permanent capital ratio.

(2) Balance sheet assets shall be assigned to the percentage risk categories as follows:

(i) *Category 1: 0 Percent*

(A) Cash on hand and demand balances held in domestic and foreign banks.

(B) Claims on Federal Reserve Banks.

(C) Goodwill acquired after May 12, 1988.

(D) Beginning 1993, all goodwill, whenever acquired.

(ii) *Category 2: 10 Percent*

(A) All securities issued by the United States Government and Government agencies.

(B) Cash items in the process of collection.

## Farm Credit Administration

§ 615.5210

(C) Portions of loans and other assets collateralized by securities of the United States Government or Government agencies.

(D) Securities and other claims guaranteed by the United States Government or Government agencies or portions of such claims (but only to the extent guaranteed).

(iii) *Category 3: 20 Percent*

(A) Loans and other assets collateralized by United States Government-sponsored agency securities.

(B) Claims on foreign banks with an original maturity of 1 year or less.

(C) Claims on domestic banks (exclusive of demand balances).

(D) Investments in State and local government obligations backed by the "full faith and credit of State or local government." Other claims (including loans) and portions of claims guaranteed by the full faith and credit of a State government (but only to the extent guaranteed).

(E) Claims on official multinational lending institutions or regional development institutions in which the United States Government is a shareholder or contributor.

(F) Loans and other obligations of and investments in Farm Credit institutions.

(G) Local currency claims on foreign central governments to the extent that the Farm Credit institution has local liabilities in that country.

(iv) *Category 4: 50 Percent*

(A) All other investment securities with maturities under 1 year.

(B) Rural housing loans secured by first lien mortgages or deeds of trust.

(v) *Category 5: 100 percent*

(A) All other claims on private obligors.

(B) Claims on foreign banks with original maturity greater than 1 year.

(C) All other assets not specified above, including but not limited to, leases, fixed assets, and receivables.

(D) Until 1993, goodwill acquired before May 12, 1988.

(E) All non-local currency claims on foreign central governments, as well as local currency claims on foreign central governments that are not included in category 3 (G).

(3) Off-Balance-Sheet Items.

(i) The dollar amount of off-balance-sheet items that shall be assigned to a risk-weight category for inclusion in the denominator shall be determined by multiplying the face amount of the item by the appropriate credit conversion factor set forth in paragraph (f)(3)(ii) of this section. The resulting amount shall be then assigned to the appropriate risk-weight category described in paragraph (f)(2) of this section on the basis of the type of obligor.

(ii) Credit conversion factors shall be applied to off-balance-sheet items as follows:

(A) *0 Percent*

(1) Unused commitments with an original maturity of 1 year or less;

(2) Unused commitments with an original maturity of greater than 1 year if;

(i) They are unconditionally cancellable by the institution; and

(ii) The institution has the contractual right to, and in fact does, make a separate credit decision based upon the borrower's current financial condition before each drawing under the lending arrangement.

(B) *20 Percent*

(1) Short-term, self-liquidating, trade-related contingencies, including but not limited to, commercial letters of credit.

(C) *50 Percent*

(1) Transaction-related contingencies (e.g. bid bonds, performance bonds, warranties, and performance-based standby letters of credit related to a particular transaction).

(2) Unused loan commitments with an original maturity exceeding 1 year, including underwriting commitments and commercial credit lines.

(3) Revolving underwriting facilities (RUFs), note issuance facilities (NIFs) and other similar arrangements pursuant to which the institution's customer can issue short-term debt obligations in its own name, but for which the institution has a legally binding commitment to either:

(i) Purchase the obligations the customer is unable to sell by a stated date; or

(ii) Advance funds to its customer if the obligations cannot be sold.

(D) *100 Percent*

(1) Direct credit substitutes including financial-guarantee-type standby letters of credit that support financial claims on the account party. The face amount of a direct credit substitute shall be netted against any participations sold in that item. The amount not so sold shall be assigned to a risk-weight category using the criteria of § 615.5210(f)(2).

(2) Acquisitions of risk participations in bankers acceptances and participations in direct credit substitutes.

(3) Sale and repurchase agreements and asset sales with recourse, if not already included on the balance sheet.

(4) Forward agreements (i.e., contractual obligations) to purchase assets, including financing facilities with certain drawdown.

(iii) Credit equivalents of interest rate contracts and foreign exchange contracts (except single currency floating/floating interest rate swaps) shall be determined by adding the replacement cost (mark-to-market value, if positive) to the potential future credit exposure, determined by multiplying the notional principal amount by the following credit conversion factors as appropriate.

[In percent]

Remaining maturity	Interest rate contracts	Exchange rate contracts
Less than 1-year .....	0	1.0
1 year and over .....	0.5	5.0

(iv) Credit equivalents of single currency floating/floating interest rate swaps shall be determined by their replacement cost (mark-to-market).

[53 FR 39247, Oct. 6, 1988, as amended at 54 FR 31323, July 28, 1989; 59 FR 37404, July 22, 1994]

#### § 615.5215 Distribution of earnings.

The boards of directors of System institutions may not reduce the permanent capital of the institution through the payment of patronage refunds or dividends, or the retirement of stock or allocated equities except retirements pursuant to §§ 615.5280 and 615.5290 if, after or due to the action, the permanent capital of the institution would fail to meet the minimum permanent capital adequacy standard established under § 615.5205 for that period. This limitation shall not apply to the pay-

ment of noncash patronage refunds by any institution exempt from Federal income tax if the entire refund paid qualifies as permanent capital at the issuing institution. Any System institution subject to Federal income tax may pay patronage refunds partially in cash if the cash portion of the refund is the minimum amount required to qualify the refund as a deductible patronage distribution for Federal income tax purposes and the remaining portion of the refund paid qualifies as permanent capital.

[53 FR 39247, Oct. 6, 1988, as amended at 53 FR 40046, Oct. 13, 1988]

#### § 615.5216 Regulatory forbearance.

(a) During 1989, no institution shall be subject to a regulatory enforcement action solely for failure to meet its interim minimum permanent standard so long as it maintains its permanent capital ratio at or above the beginning permanent capital ratio of June 30, 1988. For each year thereafter no institution shall be subject to regulatory enforcement action solely for failure to meet its minimum permanent capital standard so long as it maintains its permanent capital ratio at or above the beginning permanent capital ratio plus the forbearance increment specified in this paragraph.

Year	Forbearance Criteria
1990 .....	Beginning ratio plus 50 basis points.
1991 .....	Beginning ratio plus 125 basis points.
1992 .....	Beginning ratio plus 200 basis points.
1993 .....	Beginning ratio plus 300 basis points.
Thereafter .....	1993 ratio plus 100 basis points each year, cumulatively, until 7 percent is reached.

(b) The provisions of paragraph (a) of this section shall not apply to any institution that meets one or more of the conditions specified in § 627.2710 of this chapter for the appointment of a conservator or receiver.

[53 FR 39247, Oct. 6, 1988, as amended at 57 FR 46487, Oct. 9, 1992]

#### Subpart I—Issuance of Equities

SOURCE: 53 FR 40046, Oct. 13, 1988, unless otherwise noted.

**§ 615.5220 Capitalization bylaws.**

The board of directors of each System bank and association shall, pursuant to section 4.3A of the Farm Credit Act of 1971 (Act), adopt capitalization bylaws, subject to the approval of its voting shareholders that set forth:

(a) Classes of equities and the manner in which they shall be issued, transferred, converted and retired;

(b) For each class of equities, a description of the class(es) of persons to whom such stock may be issued, voting rights, dividend rights and preferences, and priority upon liquidation, including rights, if any, to share in the distribution of the residual estate;

(c) The number of shares and par value of equities authorized to be issued for each class of equities, except that equities that are required to be purchased as a condition of obtaining a loan and nonvoting stock into which voting stock is converted after repayment of the loan may be authorized to be issued in unlimited amounts;

(d) For Farm Credit Banks and associations, the percentage or dollar amount of equity investment (which may be expressed as a range within which the board of directors may from time to time determine the requirement) that will be required to be purchased as a condition for obtaining a loan, which amount may be more than, but shall be not less than, 2 percent of the loan amount or \$1,000, whichever is less;

(e) For banks for cooperatives, the percentage or dollar amount of equity or guaranty fund investment (which may be expressed as a range within which the board may from time to time determine the requirement) that serves as a target level of investment in the bank for patronage-sourced business, which amount may be more than, but shall not be less than, 2 percent of the loan amount or \$1,000, whichever is less;

(f) The amount of voting stock protected under section 4.9A of the Act that existing borrowers will be required to exchange for new voting stock issued under capitalization bylaws adopted pursuant to section 4.3A of the Act;

(g) The manner in which equities will be retired, including a provision stat-

ing that equities other than those protected under section 4.9A of the Act are retirable at the sole discretion of the board, provided minimum permanent capital adequacy standards (including interim standards) established in subpart H of this part are met;

(h) The manner in which earnings will be allocated and distributed, including the basis on which patronage refunds will be paid, which shall be in accord with cooperative principles; and

(i) For Farm Credit banks, the manner in which the capitalization requirements of the Farm Credit Bank shall be allocated and equalized from time to time among its owners.

**§ 615.5230 Implementation of cooperative principles.**

(a) Voting shareholders of Farm Credit banks and associations shall be accorded full voting rights in accordance with cooperative principles.

(1) Voting shareholders of associations and banks for cooperatives shall:

(i) Have only one vote, regardless of the number of shares owned or the number of loans outstanding, except as otherwise required by statute or regulation and except as modified by paragraph (b) of this section;

(ii) Unless regional election of directors is provided for in the bylaws pursuant to § 615.5230(a)(3), be accorded the right to vote in the election of each director (except for a director that is elected by the other directors);

(iii) Unless regional election of directors is provided for in the bylaws, or unless otherwise provided in the bylaws, be allowed to cumulate such votes and distribute them among the candidates in the shareholder's discretion.

(2) Each voting shareholder of a Farm Credit Bank shall:

(i) Have one vote that is assigned a weight proportional to the number of the association's voting shareholders in a manner that does not discriminate against agricultural credit associations that have resulted from the merger or consolidation of Federal land bank associations and production credit associations; and

(ii) Have the right to vote in the election of each director and, unless otherwise agreed to by each association



shareholder, be allowed to cumulate such votes and distribute them among the candidates in the shareholder's discretion.

(3) Regional election of directors is permitted under the following conditions:

(i) A bylaw establishing regional elections is approved by a majority of voting shareholders, voting in person or by proxy, prior to implementation;

(ii) The bylaw provides that all voting shareholders of the institution, whether or not they reside in the director's region, have the right to vote in any shareholder vote to remove each director;

(iii) There are an approximately equal number of voting shareholders in each of the institution's voting regions. The regions shall be deemed to have an approximately equal number of voting shareholders if no region contains more than 25 percent more voting shareholders than in any other region. At least once every 3 years, the institution shall count the number of voting shareholders in each region and, if the regions do not have an approximately equal number of shareholders, shall adjust the regional boundaries to achieve such result; and

(iv) An institution may provide for more than one director to represent a region. In such case, for purposes of determining whether the regions have an approximately equal number of voting shareholders, the number of voting shareholders in the region with more than one director shall be divided by the number of director positions representing that region, and the resulting quotient shall be the number that is compared to the number of voting shareholders in other regions.

(b) Each equityholder of each institution shall be equitably treated in the operation of the institution.

(1) Each issuance of preferred stock (other than preferred stock to be issued to the Farm Credit System Financial Assistance Corporation and preferred stock outstanding on October 5, 1988, and stock into which such outstanding stock is converted that has substantially similar preferences) shall be approved by a majority of the shares of each class of equities affected by the preference, voting as a class, whether

or not such classes are otherwise authorized to vote;

(2) Any dividends paid to the holders of common stock and participation certificates shall be on a per share basis and without preference as to rate or priority of payment between classes of common stock, between classes of participation certificates, between classes of common stock and classes of participation certificates, or between holders of the same class of stock or participation certificates, except that any class of common stock or participation certificates that result from the conversion of allocated surplus may be subordinated to other classes of common stock and participation certificates in the payment of dividends.

(3) Any patronage refunds that are paid shall be paid in accordance with cooperative principles, on an equitable and nondiscriminatory basis determined by the board of directors in accordance with the capitalization bylaws, provided that any earning pools that may be established for the payment of patronage shall be established on a rational and equitable basis that will ensure that each patron of the institution receives its fair share of the earnings of the institution and bears its fair share of the expenses of the institution.

(4) All classes of common stock and participation certificates (except those resulting from a conversion of allocated surplus) must be accorded the same priority with respect to impairment and restoration of impairment and have the same rights and priority upon liquidation.

[53 FR 40046, Oct. 13, 1988, as amended at 54 FR 6118, Feb. 8, 1989; 60 FR 57921, Nov. 24, 1995]

**§615.5240 Permanent capital requirements.**

The capitalization bylaws shall enable the institution to meet the minimum permanent capital adequacy standards (including interim standards) established under subpart H of this part and the total capital requirements established by the board of directors of the institution.

## Farm Credit Administration

## § 615.5250

(a) In order to qualify as permanent capital, equities issued under the by-laws must meet the following requirements:

(1) For common stock and participation certificates—

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvment plan;

(ii) Retirement must be at not more than book value;

(iii) Disclosure must have been made pursuant to §615.5250 of the nature of the investment and the terms and conditions under which it is issued, and the rights, if any, to share in any patronage distributions that may be made.

(iv) Dividends must be payable only at the discretion of the board and must be noncumulative.

(2) For preferred stock issued to persons other than the Farm Credit System Financial Assistance Corporation—

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvment plan;

(ii) Retirement must be at not more than book value;

(iii) Dividends must be payable only in the discretion of the board, and may be cumulative; and

(iv) Disclosure must have been made pursuant to §615.5250 of the nature of the investment and the terms and conditions under which it is issued.

(b) Until a bank or association meets the minimum permanent capital standards (including interim standards) established by the FCA under subpart H of this part, all equities required to be purchased as a condition for obtaining a loan shall be purchased from the institution.

### §615.5250 Disclosure requirements.

(a) Equities purchased as a condition for obtaining a loan. Prior to loan closing, the institution shall provide the

prospective borrower with the following:

(1) The institution's most recent annual report filed under 12 CFR part 620;

(2) The institution's most recent quarterly report filed under 12 CFR part 620, if more recent than the annual report;

(3) A copy of the institution's capitalization bylaws; and

(4) A written description of the terms and conditions under which the equity is issued. In addition to specific terms and conditions, the description shall disclose:

(i) That the equity is an at-risk investment and not a compensating balance;

(ii) That the equity is retireable only at the discretion of the board of directors and only if minimum permanent capital standards (including interim standards) established under subpart H of this part are met;

(iii) Whether the institution presently meets its minimum permanent capital standards, including interim standards; and

(iv) Whether the institution knows of any reason the institution may not meet its permanent capital standard on the next earnings distribution date.

(b) Notwithstanding the provisions of paragraph (a) of this section, no materials previously provided to a purchaser need be provided again unless the purchaser requests, except the disclosure required by paragraph (a)(4) of this section.

(c) Prior to any mandatory exchange of eligible borrower stock, as defined in §615.5260(a)(1), for stock issued under capitalization bylaws required under §615.5220, equityholders shall be provided with the disclosures required by paragraphs (a)(3) and (a)(4) of this section.

(d) Other equities. (1) No stock or participation certificates other than those required to be purchased as a condition of obtaining a loan may be offered for sale except pursuant to a disclosure statement containing all of the information required by 12 CFR part 620 in the annual report to shareholders as of a date within 135 days of the proposed sale, which disclosure statement must have been reviewed

and cleared by the Farm Credit Administration. The most recent annual report to shareholders and the most recent quarterly report filed with the Farm Credit Administration may be incorporated by reference into the disclosure statement in satisfaction of this requirement. In addition, the disclosure statement shall include items in (3) and (4) of paragraph (a) of this section and a discussion of the intended use of the sale proceeds. No materials previously provided to the purchaser need be provided again unless the purchaser requests it, except the disclosure required by paragraph (a)(4) of this section and a discussion of the use of sale proceeds.

(2) At least 45 days prior to the proposed sale of such equities, the institution shall submit the disclosure statement required by paragraph (d)(1) of this section to the Farm Credit Administration for review and clearance.

(3) Within 30 days of the receipt of such disclosure statement and any clarifying information the Farm Credit Administration may request, the Farm Credit Administration shall inform the institution whether the Farm Credit Administration will consider the issuance permanent capital for the purpose of meeting the minimum permanent capital standards established under subpart H (including interim standards) and shall inform the institution of any required changes or additions to the disclosure materials.

(4) No officer, director, employee, or agent of a System institution shall make any disclosure, through the disclosure statement or otherwise, in connection with the sale of equities that is inaccurate or misleading, or omit to make any statement needed to make other disclosures made by such person not misleading.

(5) The Farm Credit Administration may waive any or all of the disclosure requirements of paragraph (b) of this section when a single investor acquires \$100,000 or more of a single class of equity if the sophistication of the purchaser warrants, provided that any certificate that may be issued evidencing such an equity states on its face in boldface type:

*The denomination of this equity may not be reduced to less than \$100,000 without the prior*

*written approval of the Farm Credit Administration.*

(e) The requirements of this section shall not apply to the sale of Farm Credit System institution equities to other Farm Credit System institutions, other financing institutions, or non-Farm Credit System lenders.

[53 FR 40046, Oct. 13, 1988, as amended at 56 FR 2675, Jan. 24, 1991; 61 FR 67187, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, in § 615.5250, paragraph (e) was revised, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. The text remaining in effect until further notice appears below.

**§ 615.5250 Disclosure requirements.**

\* \* \* \* \*

(e) The requirements of this section shall not apply to the sale of Farm Credit System institution equities to other Farm Credit System institutions or other financing institutions having a discount or lending relationship with the selling Farm Credit System institution.

\* \* \* \* \*

**Subpart J—Retirement of Equities**

**§ 615.5260 Retirement of eligible borrower stock.**

(a) *Definitions.* For the purposes of this subpart the following definitions shall apply:

(1) *Eligible borrowers stock* means:

(i) Stock, participation certificates or allocated equities outstanding on January 6, 1988, or purchased as a condition of obtaining a loan prior to the earlier of the date of shareholder approval of capitalization bylaws under section 4.3A of the Act or October 6, 1988; and

(ii) Any stock, participation certificates or allocated equities for which such eligible borrower stock is exchanged in connection with a merger, consolidation, or other reorganization or a transfer of territory. *Eligible borrower stock* does not include equities for which eligible borrower stock is required to be exchanged pursuant to the bylaws adopted under section 4.3A or equities for which eligible borrower

## Farm Credit Administration

## § 615.5280

stock is voluntarily exchanged except in connection with a merger, consolidation or other reorganization or a transfer of territory.

(2) *Retirement in the ordinary course of business* means:

(i) Retirement upon repayment of a loan or under a retirement or revolving plan in effect prior to January 6, 1988, and for eligible borrower stock issued after that date, at the time the loan was made;

(ii) Retirement pursuant to §§ 615.5280 and 615.5290; or

(iii) Retirement necessary to accomplish an exchange of eligible borrower stock for a like amount of at-risk stock.

(3) *Par value* means:

(i) In the case of stock, par value;

(ii) In the case of participation certificates and other equities (except equities unable to be retired in connection with a liquidation occurring after January 1, 1983, and before January 1, 1988), face or equivalent value; or

(iii) In the case of participation certificates and allocated surplus subject to retirement under a revolving cycle and retired out of order pursuant to §§ 615.5280 and 615.5290 or otherwise under the Act, par or face value discounted at a rate determined by the institution to reflect the present value of the equity as of the date of such retirement.

(b) When an institution retires eligible borrower stock in the ordinary course of business, such equities shall be retired at par, even if book value is less than par.

(c) When a Farm Credit Bank retires stock for the sole purpose of enabling an association to retire eligible borrower stock that was issued in connection with a long term real estate loan, such stock shall be retired at par even if its book value is less than par.

(d) No eligible borrower stock shall be retired other than in the ordinary course of business without the prior approval of the Farm Credit Administration.

[53 FR 40048, Oct. 13, 1988; 54 FR 7029, Feb. 16, 1989]

### § 615.5270 Retirement of other equities.

(a) Equities other than eligible borrower stock shall be retired at not more than their book value.

(b) No equities shall be retired, except pursuant to §§ 615.5280 and 615.5290, unless after the retirement the institution would continue to meet the minimum permanent capital standards (including interim standards) established under subpart H of this part.

[53 FR 40048, Oct. 13, 1988; 54 FR 7029, Feb. 16, 1989]

### § 615.5280 Retirement in event of default.

(a) When the debt of a holder of eligible borrower stock issued by a production credit association, Federal land association, Federal land credit association or agriculture credit association is in default, such institution may, but shall not be required to, retire at par eligible borrower stock owned by such borrower on which the institution has a lien, in total or partial liquidation of the debt.

(b) When the debt of a holder of stock, participation certificates or other equities issued by a production credit association, Federal land bank association, Federal land credit association or agricultural credit association is in default, such institution may, but shall not be required to, retire at book value not to exceed par all or part of such equities, other than eligible borrower stock as defined in § 615.5260(a)(1), owned by such borrower on which the institution has a lien, in total or partial liquidation of the debt.

(c) When the debt of a holder of equities or guaranty fund certificates issued by a bank for cooperatives or agricultural credit bank is in default the bank may, but shall not be required to, retire all or part of such equities qualify or guaranty fund investments owned by the borrower on which the bank has a lien, in total or partial liquidation of the debt. If such investments qualify as eligible borrower stock, it shall be retired at par, as defined in § 615.5260(a)(3). All other investments shall be retired at a rate determined by the institution to reflect its present value on the date of retirement.

(d) When the debt of a holder of the equities of a Farm Credit Bank or agricultural credit bank is in default the bank may, but shall not be required to, retire all or part of such equities owned by the borrower on which the bank has a lien, in total or partial liquidation of the debt. If such equities qualify as eligible borrower stock or are retired solely to permit a Federal land bank association to retire eligible borrower stock under §615.5280(a), they shall be retired at par. All other equities shall be retired at book value not to exceed par.

(e) Any retirements made under this section by a Federal land bank association shall be made only upon the specific approval of, or in accordance with, approval procedures issued by the association's funding bank.

(f) Prior to making any retirement pursuant to this section, except retirements pursuant to paragraphs (c) and (d) of this section, the institution shall provide the borrower with written notice of the following matters:

(1) A statement that the institution has declared the borrower's loan to be in default;

(2) A statement that the institution will retire all or part of the equities of the borrower in total or partial liquidation of his or her loan;

(3) A description of the effect of the retirement on the relationship of the borrower to the institution;

(4) A statement of the amount of the outstanding debt that will be owed to the institution after the retirement of the borrower's equities; and

(5) The date on which the institution will retire the equities of the borrower.

(g) The notice required by this section shall be provided in person at least 10 days prior to the retirement of any equities of a holder, or by mailing a copy of the notice by first class mail to the last known address of the equity holder at least 13 days prior to the retirement of such person's equities.

(h) The requirements of this section may be satisfied by notices given pursuant to §§614.4516, 614.4518, and 614.4519 of title 12 of the Code of Federal Regulations that contain the information required by this section.

EFFECTIVE DATE NOTE: At 61 FR 67187, Dec. 20, 1996, in §615.5280, paragraphs (a) through (e) were revised, effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session. The text remaining in effect until further notice appears below.

**§615.5280 Retirement in event of default.**

(a) When the debt of a holder of eligible borrower stock issued by a production credit association, Federal land bank association or agricultural credit association is in default, such institution may, but shall not be required to, retire at par eligible borrower stock owned by such borrower on which the institution has a lien, in total or partial liquidation of the debt.

(b) When the debt of a holder of stock, participation certificates or other equities issued by a production credit association, Federal land bank association, or agricultural credit association is in default, such institution may, but shall not be required to, retire at book value not to exceed par all or part of such equities, other than eligible borrower stock as defined in §615.5260(a)(1), owned by such borrower on which the institution has a lien, in total or partial liquidation of the debt.

(c) When the debt of a holder of equities or guaranty fund certificates issued by a bank for cooperatives is in default, the bank for cooperatives may, but shall not be required to, retire all or part of such equities or guaranty fund investments owned by the borrower on which the bank for cooperatives has a lien, in total or partial liquidation of the debt. If such investments qualify as eligible borrower stock, it shall be retired at par, as defined in §615.5260(a)(3). All other investments shall be retired at a rate determined by the institution to reflect its present value on the date of retirement.

(d) When the debt of a holder of the equities of a Farm Credit Bank is in default, the Farm Credit Bank may, but shall not be required to, retire all or part of such equities owned by the borrower on which the Farm Credit Bank has a lien, in total or partial liquidation of the debt. If such equities qualify as eligible borrower stock or are retired solely to permit a Federal land bank association to retire eligible borrower stock under §615.5280(a), they shall be retired at par. All other equities shall be retired at book value not to exceed par.

(e) Any retirements made under this section by a Federal land bank association that is not a direct lender shall be made only upon the specific approval of or in accordance with approval procedures issued by the district Farm Credit Bank.

\* \* \* \* \*

[53 FR 40048, Oct. 13, 1988; 54 FR 7029, Feb. 16, 1989, as amended at 61 FR 67187, Dec. 20, 1996]

**§615.5290 Retirement of capital stock and participation certificates in event of restructuring.**

(a) If a Farm Credit Bank or agricultural credit bank forgives and writes off, under §614.4517, any of the principal outstanding on a loan made to any borrower, where appropriate the Federal land bank association of which the borrower is a member and stockholder shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such stock, and to the extent provided for in the bylaws of the Bank relating to its capitalization, the Farm Credit Bank or agricultural credit bank shall retire an equal amount of stock owned by the Federal land bank association.

(b) If a production credit association or merged association forgives and writes off, under §614.4517, any of the principal outstanding on a loan made to any borrower, the association shall cancel the same dollar amount of borrower stock held by the borrower in respect of the loan, up to the total amount of such loan.

(c) Notwithstanding paragraphs (a) and (b) of this section, the borrower shall be entitled to retain at least one share of stock to maintain the borrower's membership and voting interest.

[53 FR 35457, Sept. 14, 1988, as amended at 61 FR 67188, Dec. 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 67188, Dec. 20, 1996, in §615.5290, paragraph (a) was amended by adding the words "or agricultural credit bank" after the words "Farm Credit Bank", effective upon the expiration of 30 days after publication in the Federal Register during which either or both houses of Congress are in session.

**Subpart K—Surplus and Reserves**

**§615.5330 Banks for cooperatives.**

Each bank for cooperatives shall add to the unallocated surplus account annually an amount not less than 10 percent of net earnings after taxes until such time as the unallocated surplus equals half of the minimum permanent capital requirement established under §615.5205(a) of subpart H of this part.

[53 FR 40048, Oct. 13, 1988]

**Subparts L–N—[Reserved]**

**Subpart O—Book-Entry Procedures for Farm Credit Securities**

SOURCE: 61 FR 67192, Dec. 20, 1996, unless otherwise noted.

**§615.5450 Definitions.**

In this subpart, unless the context otherwise requires or indicates:

(a) *Adverse claim* means a claim that a claimant has a property interest in a security and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the security.

(b) *Book-entry security* means a Farm Credit security issued or maintained in the Book-entry System.

(c) *Book-entry System* means the automated book-entry system operated by the Federal Reserve Banks, acting as the fiscal agent for the Farm Credit banks, through which book-entry securities are issued, recorded, transferred and maintained in book-entry form.

(d) *Definitive Farm Credit security* means a Farm Credit security in engraved or printed form, or that is otherwise represented by a certificate.

(e) *Eligible book-entry security* means a book-entry security issued or maintained in the Book-entry System, which by the terms of its securities documentation, is eligible to be converted from book-entry into definitive form.

(f) *Entitlement Holder* means a person to whose account an interest in a book-entry security is credited on the records of a securities intermediary.

(g) *Farm Credit banks* means one or more Farm Credit Banks, agricultural credit banks, and banks for cooperatives.

(h) *Farm Credit securities* means consolidated notes, bonds, debentures, or other similar obligations of the Farm Credit banks and Systemwide notes, bonds, debentures, or similar obligations of the Farm Credit banks issued under sections 4.2(c) and 4.2(d) of the Act, or laws repealed thereby.

(i) *Federal Reserve Bank* means a Federal Reserve Bank or Branch acting as

agent for the Farm Credit banks and the Funding Corporation.

(j) *Federal Reserve Bank Operating Circular* means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Federal Reserve Bank maintains book-entry securities accounts and transfers book-entry securities.

(k) *Funding Corporation* means the Federal Farm Credit Banks Funding Corporation established pursuant to section 4.9 of the Act, which issues Farm Credit securities on behalf of the Farm Credit banks.

(l) *Funds Account* means a reserve and/or clearing account at a Federal Reserve Bank to which debits or credits are posted for transfers against payment, book-entry securities transaction fees, or principal and interest payments.

(m) *Participant* means a person that maintains a participant's securities account with a Federal Reserve Bank.

(n) *Participant's Securities Account* means an account in the name of a participant at a Federal Reserve Bank to which book-entry securities held for a participant are or may be credited.

(o) *Person* means an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative and any other similar organization, but does not mean the United States, a Farm Credit bank, the Funding Corporation or a Federal Reserve Bank.

(p) *Revised Article 8* means Uniform Commercial Code, Revised Article 8, Investment Securities (with Conforming and Miscellaneous Amendments to Articles 1, 3, 4, 5, 9, and 10) 1994 Official Text, and has the same meaning as in 31 CFR 357.2.

(q) *Securities Documentation* means the applicable statement of terms, trust indenture, securities agreement, offering circular or other documents establishing the terms of a book-entry security.

(r) *Securities Intermediary* means:

(1) A person that is registered as a "clearing agency" under the Federal securities laws; a Federal Reserve Bank; any other person that provides clearance or settlement services with respect to a book-entry security that would require it to register as a clear-

ing agency under the Federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a Federal or State governmental authority; or

(2) A person (other than an individual, unless such individual is registered as a broker or dealer under the Federal securities laws) including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(s) *Security* means a Farm Credit security as defined in paragraph (h) of this section.

(t) *Security Entitlement* means the rights and property interest of an entitlement holder with respect to a book-entry security.

(u) *State* means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other territory or possession of the United States.

(v) *Transfer Message* means an instruction of a participant to a Federal Reserve Bank to effect a transfer of a book-entry security maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

#### **§ 615.5451 Book-entry and definitive securities.**

Subject to subpart C of this part:

(a) Farm Credit banks operating under the same title of the Act may issue consolidated securities in book-entry form.

(b) Farm Credit banks may issue Systemwide securities in book-entry form.

(c) Consolidated and Systemwide securities also may be issued in bearer-definitive form.

#### **§ 615.5452 Law governing rights and obligations of United States, Federal Reserve Banks, Farm Credit banks, and Funding Corporation; rights of any person against United States, Federal Reserve Banks, Farm Credit banks, and Funding Corporation.**

(a) Except as provided in paragraph (b) of this section, the following are governed solely by the regulations contained in this subpart O, the securities

## Farm Credit Administration

## § 615.5453

documentation, and Federal Reserve Bank Operating Circulars:

(1) The rights and obligations of the United States, the Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks with respect to:

(i) A book-entry security or security entitlement, and

(ii) The operation of the Book-entry System as it applies to Farm Credit securities; and

(2) The rights of any person, including a participant, against the United States, the Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks with respect to:

(i) A book-entry security or security entitlement, and

(ii) The operation of the Book-entry System as it applies to Farm Credit securities.

(b) A security interest in a security entitlement that is in favor of a Federal Reserve Bank from a participant and that is not recorded on the books of a Federal Reserve Bank pursuant to § 615.5454(c)(1) of this subpart, is governed by the law (not including the conflict-of-law rules) of the jurisdiction where the head office of the Federal Reserve Bank maintaining the participant's securities account is located. A security interest in a security entitlement that is in favor of a Federal Reserve Bank from a person that is not a participant, and that is not recorded on the books of a Federal Reserve Bank pursuant to § 615.5454(c)(1) of this subpart, is governed by the law determined in the manner specified in § 615.5453 of this subpart.

(c) If the jurisdiction specified in the first sentence of paragraph (b) of this section is a State that has not adopted revised Article 8 (see 31 CFR 357.2) then the law specified in paragraph (b) of this section shall be the law of that State as though revised Article 8 had been adopted by that State.

### **§ 615.5453 Law governing other interests.**

(a) To the extent not inconsistent with these regulations, the law (not including the conflict-of-law rules) of a securities intermediary's jurisdiction governs:

(1) The acquisition of a security entitlement from the securities intermediary;

(2) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement;

(4) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder; and

(5) Except as otherwise provided in paragraph (c) of this section, the perfection, effect of perfection or non-perfection and priority of a security interest in a security entitlement.

(b) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder specifies that it is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(2) If an agreement between the securities intermediary and its entitlement holder does not specify the governing law as provided in paragraph (b)(1) of this section, but expressly specifies that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section, the securities intermediary's jurisdiction is the jurisdiction in which is located the office identified in an account statement as the office serving the entitlement holder's account.

(4) If an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (b)(1) or (b)(2) of this section and an account statement does not identify an office serving the entitlement holder's account as



provided in paragraph (b)(3) of this section, the securities intermediary's jurisdiction is the jurisdiction in which is located the chief executive office of the securities intermediary.

(c) Notwithstanding the general rule in paragraph (a)(5) of this section, the law (but not the conflict-of-law rules) of the jurisdiction in which the person creating a security interest is located governs whether and how the security interest may be perfected automatically or by filing a financing statement.

(d) If the jurisdiction specified in paragraph (b) of this section is a State that has not adopted revised Article 8 (see 31 CFR 357.2), then the law for the matters specified in paragraph (a) of this section shall be the law of that State as though revised Article 8 had been adopted by that State. For purposes of the application of the matters specified in paragraph (a) of this section, the Federal Reserve Bank maintaining the securities account is a clearing corporation, and the participant's interest in a book-entry security is a security entitlement.

**§ 615.5454 Creation of participant's security entitlement; security interests.**

(a) A participant's security entitlement is created when a Federal Reserve Bank indicates by book entry that a book-entry security has been credited to a participant's securities account.

(b) A security interest in a security entitlement of a participant in favor of the United States to secure deposits of public money, including without limitation deposits to the Treasury tax and loan accounts, or other security interest in favor of the United States that is required by Federal statute, regulation, or agreement, and that is marked on the books of a Federal Reserve Bank is thereby effected and perfected, and has priority over any other interest in the securities. Where a security interest in favor of the United States in a security entitlement of a participant is marked on the books of a Federal Reserve Bank, such Federal Reserve Bank may rely, and is protected in relying, exclusively on the order of an authorized representative of the United

States directing the transfer of the security. For purposes of this paragraph, an "authorized representative of the United States" is the official designated in the applicable regulations or agreement to which a Federal Reserve Bank is a party, governing the security interest.

(c)(1) The Farm Credit banks, the Funding Corporation, the United States, and the Federal Reserve Banks have no obligation to agree to act on behalf of any person or to recognize the interest of any transferee of a security interest or other limited interest in favor of any person except to the extent of any specific requirement of Federal law or regulation or to the extent set forth in any specific agreement with the Federal Reserve Bank on whose books the interest of the participant is recorded. To the extent required by such law or regulation or set forth in an agreement with a Federal Reserve Bank, or the Federal Reserve Bank Operating Circular, a security interest in a security entitlement that is in favor of a Federal Reserve Bank, a Farm Credit bank, the Funding Corporation, or a person may be created and perfected by a Federal Reserve Bank marking its books to record the security interest. Except as provided in paragraph (b) of this section, a security interest in a security entitlement marked on the books of a Federal Reserve Bank shall have priority over any other interest in the securities.

(2) In addition to the method provided in paragraph (c)(1) of this section, a security interest, including a security interest in favor of a Federal Reserve Bank, may be perfected by any method by which a security interest may be perfected under applicable law as described in § 615.5452(b) or § 615.5453 of this subpart. The perfection, effect of perfection or non-perfection and priority of a security interest are governed by that applicable law. A security interest in favor of a Federal Reserve Bank shall be treated as a security interest in favor of a clearing corporation in all respects under that law, including with respect to the effect of perfection and priority of the security interest. A Federal Reserve Bank Operating Circular shall be treated as a rule

## Farm Credit Administration

## § 615.5457

adopted by a clearing corporation for such purposes.

### **§ 615.5455 Obligations of the Farm Credit banks and the Funding Corporation; no adverse claims.**

(a) Except in the case of a security interest in favor of the United States or a Federal Reserve Bank or otherwise as provided in § 615.5454(c)(1), for the purposes of this subpart O, the Farm Credit banks, the Funding Corporation and the Federal Reserve Banks shall treat the participant to whose securities account an interest in a book-entry security has been credited as the person exclusively entitled to issue a transfer message, to receive interest and other payments with respect thereof and otherwise to exercise all the rights and powers with respect to such security, notwithstanding any information or notice to the contrary. The Federal Reserve Banks, the United States, the Farm Credit banks, and the Funding Corporation are not liable to a person asserting or having an adverse claim to a security entitlement or to a book-entry security in a participant's securities account, including any such claim arising as a result of the transfer or disposition of a book-entry security by a Federal Reserve Bank pursuant to a transfer message that the Federal Reserve Bank reasonably believes to be genuine.

(b) The obligation of the Farm Credit banks and the Funding Corporation to make payments (including payments of interest and principal) with respect to book-entry securities is discharged at the time payment in the appropriate amount is made as follows:

(1) Interest or other payments on book-entry securities are either credited by a Federal Reserve Bank to a funds account maintained at the Federal Reserve Bank or otherwise paid as directed by the participant.

(2) Book-entry securities are redeemed in accordance with their terms by a Federal Reserve Bank withdrawing the securities from the participant's securities account in which they are maintained and by either crediting the amount of the redemption proceeds, including both principal and interest, where applicable, to a funds account at the Federal Reserve Bank or

otherwise paying such principal and interest as directed by the participant. No action by the participant is required in connection with the redemption of a book-entry security.

### **§ 615.5456 Authority of Federal Reserve Banks.**

(a) Each Federal Reserve Bank is hereby authorized as fiscal agent of the Farm Credit banks and the Funding Corporation to perform functions with respect to the issuance of book-entry securities offered and sold by the Farm Credit banks and the Funding Corporation to which this subpart applies, in accordance with the terms of the securities documentation and the provisions of this subpart:

(1) To service and maintain book-entry securities in accounts established for such purposes;

(2) To make payments of principal and interest, as directed by the Farm Credit banks and the Funding Corporation;

(3) To effect transfer of book-entry securities between participants' securities accounts as directed by the participants;

(4) To effect conversions between book-entry securities and definitive Farm Credit securities with respect to those securities as to which conversion rights are available pursuant to the applicable securities documentation; and

(5) To perform such other duties as fiscal agent as may be requested by the Farm Credit banks and the Funding Corporation.

(b) Each Federal Reserve Bank may issue Operating Circulars not inconsistent with this subpart, governing the details of its handling of book-entry securities, security entitlements, and the operation of the Book-entry System under this subpart.

### **§ 615.5457 Withdrawal of eligible book-entry securities for conversion to definitive form.**

(a) Eligible book-entry securities may be withdrawn from the Book-entry System by requesting delivery of like definitive Farm Credit securities.

(b) A Federal Reserve Bank shall, upon receipt of appropriate instructions to withdraw eligible book-entry securities from book-entry in the

Book-entry System, convert such securities into definitive Farm Credit securities and deliver them in accordance with such instructions.

(c) Farm Credit securities which are to be delivered upon withdrawal may be issued in bearer form, to the extent permitted by the applicable securities documentation.

(d) All requests for withdrawal of eligible book-entry securities must be made prior to the maturity or date of call of the Farm Credit securities.

**§615.5458 Waiver of regulations.**

The Farm Credit Administration reserves the right, in the Farm Credit Administration's discretion, to waive any provision(s) of the regulations in this subpart in any case or class of cases for the convenience of the Farm Credit banks and the Funding Corporation or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not adversely affect any substantial existing rights, and the Farm Credit Administration is satisfied that such action will not subject the Farm Credit banks and the Funding Corporation to any substantial expense or liability.

**§615.5459 Liability of Farm Credit banks, Funding Corporation and Federal Reserve Banks.**

The Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks may rely on the information provided in a transfer message or other transaction documentation, and are not required to verify the information. The Farm Credit banks, the Funding Corporation, and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information set out in the transfer message, other transaction documentation, or evidence submitted in support thereof.

**§615.5460 Additional provisions.**

(a) *Additional requirements.* In any case or any class of cases arising under the regulations in this subpart, the Farm Credit banks and the Funding Corporation may require such additional evidence and a bond of indemnity, with or without surety, as may in the judgment of the Farm Credit banks and the Funding Corporation be nec-

essary for the protection of the interests of the Farm Credit banks and the Funding Corporation.

(b) *Notice of attachment for Farm Credit securities in the Book-entry System.* The interest of a debtor in a security entitlement may be reached by a creditor only by legal process upon the securities intermediary with whom the debtor's securities account is maintained, except where a security entitlement is maintained in the name of a secured party, in which case the debtor's interest may be reached by legal process upon the secured party. These regulations do not purport to establish whether a Federal Reserve Bank is required to honor an order or other notice of attachment in any particular case or class of cases.

**§615.5461 Lost, stolen, destroyed, mutilated or defaced Farm Credit securities, including coupons.**

(a) Relief on the account of the loss, theft, destruction, mutilation, or defacement of any definitive consolidated or Systemwide securities of the Farm Credit banks and coupons of such securities may be granted on the same basis and to the same extent as relief may be granted under the statutes of the United States and the regulations of the Department of the Treasury on the account of the loss, theft, destruction, mutilation, or defacement of United States securities and coupons of such securities.

(b) Applicants for relief under paragraph (a) of this section, shall present claims and proof of loss:

(1) To the Division of Special Investments, Bureau of the Public Debt, P.O. Box 396, Parkersburg, WV 26102-0396, in the case of consolidated or Systemwide securities of the Farm Credit banks issued prior to May 1, 1978; or

(2) To the Federal Farm Credit Banks Funding Corporation, 10 Exchange Place, Suite 1401, Jersey City, NJ 07302, in the case of consolidated or Systemwide securities issued on or after May 1, 1978.

**§615.5462 Restrictive endorsement of bearer securities.**

When consolidated and Systemwide bearer securities of the Farm Credit banks are being presented to Federal

## Farm Credit Administration

§ 615.5560

Reserve Banks, for redemption, exchange, or conversion to book entry, such securities may be restrictively endorsed. The restrictive endorsement shall be placed thereon in substantially the same manner and with the same effects as prescribed in United States Treasury Department regulations, now or hereafter in force, governing like transactions in United States bonds; and consolidated or Systemwide securities of the Farm Credit banks so endorsed shall be prepared for shipment and shipped in the manner prescribed in such regulations for United States bearer securities. (See 31 CFR part 328.)

### Subpart P—Global Debt Securities

#### § 615.5500 Definitions.

In this subpart, unless the context otherwise requires or indicates:

(a) *Global debt securities* means consolidated Systemwide debt securities issued by the Funding Corporation on behalf of the Farm Credit banks under section 4.2(d) of the Act through a fiscal agent or agents and distributed either exclusively outside the United States or simultaneously inside and outside the United States.

(b) *Global agent* means any fiscal agent, other than the Federal Reserve Banks, used by the Funding Corporation to facilitate the sale of global debt securities.

[60 FR 57919, Nov. 24, 1995]

#### § 615.5502 Issuance of global debt securities.

(a) The Funding Corporation may provide for the sale of global debt securities on behalf of the Farm Credit banks through a global agent or agents by negotiation, offer, bid, or syndicate sale, and deliver such obligations by book-entry, wire transfer, or such other means as may be appropriate.

(b) The Funding Corporation Board of Directors shall establish appropriate criteria for the selection of global agents and shall approve each global agent.

[60 FR 57919, Nov. 24, 1995]

### Subpart Q—Bankers Acceptances

#### § 615.5550 Bankers acceptances.

Subject to the provisions of § 614.4710, banks for cooperatives may rediscount with other purchasers the acceptances they have created. The bank for cooperatives' board of directors, under established policies, may delegate this authority to management.

[55 FR 24888, June 19, 1990]

### Subpart R—Farm Credit System Financial Assistance Corporation Securities

#### § 615.5560 Book-entry Procedure for Farm Credit System Financial Assistance Corporation Securities.

(a) The Farm Credit System Financial Assistance Corporation (Financial Assistance Corporation) is a federally chartered instrumentality of the United States, and an institution of the Farm Credit System, subject to the examination and regulation of the Farm Credit Administration.

(b) Subject to the approval of the Farm Credit System Assistance Board, the Financial Assistance Corporation is authorized by section 6.26 of the Act to issue uncollateralized bonds, notes, debentures, and similar obligations, guaranteed as to the timely payment of principal and interest by the Secretary of the Treasury, for a term of 15 years (Financial Assistance Corporation securities). The Financial Assistance Corporation may prescribe the forms, the denominations, the rates of interest, the conditions, the manner of issuance and the prices of such Financial Assistance Corporation obligations.

(c) Financial Assistance Corporation securities shall be governed by §§ 615.5450, and 615.5452 through 615.5460. In interpreting those sections for purposes of this subpart, unless the context requires otherwise, the term "Financial Assistance Corporation securities" shall be read for "Farm Credit securities," and "Financial Assistance Corporation" shall be read for "Farm Credit banks" and "Funding Corporation." These terms shall be read as

§ 615.5570

though modified where necessary to effectuate the application of the designated sections of subpart O of this part to the Financial Assistance Corporation.

[53 FR 12141, Apr. 13, 1988; 53 FR 27156, July 19, 1988, as amended at 61 FR 67195, Dec. 20, 1996]

**Subpart S—Federal Agricultural Mortgage Corporation Securities**

**§615.5570 Book-entry procedures for Federal Agricultural Mortgage Corporation Securities.**

(a) The Federal Agricultural Mortgage Corporation (Farmer Mac) is a Federally chartered instrumentality of the United States and an institution of the Farm Credit System, subject to the examination and regulation of the Farm Credit Administration.

(b) Farmer Mac, either in its own name or through an affiliate controlled or owned by Farmer Mac, is authorized by section 8.6 of the Act:

(1) To issue and/or guarantee the timely payment of principal and interest on securities representing interests in or obligations backed by pools of agricultural real estate loans (guaranteed securities); and

(2) to issue debt obligations (which, together with the guaranteed securities described in paragraph (b)(1) of this section, are referred to as Farmer Mac securities). Farmer Mac may prescribe the forms, the denominations, the rates of interest, the conditions, the manner of issuance, and the prices of Farmer Mac securities.

(c) Farmer Mac securities shall be governed by §§615.5450, and 615.5452 through 615.5460. In interpreting those sections for purposes of this subpart, unless the context requires otherwise, the term "Farmer Mac securities" shall be read for "Farm Credit securities," and "Farmer Mac" shall be read for "Farm Credit banks" and "Funding Corporation." These terms shall be read as though modified where necessary to effectuate the application of the designated sections of subpart O of this part to Farmer Mac.

[61 FR 31394, June 20, 1996, as amended at 61 FR 67195, Dec. 20, 1996]

12 CFR Ch. VI (1–1–97 Edition)

**PART 616—[RESERVED]**

**PART 617—INVESTIGATIONS**

**Subpart A—[Reserved]**

**Subpart B—Investigations—Personnel**

Sec.

617.7110 Reporting of violations.

617.7120 Cases for referral.

**Subpart C—Investigations—Borrowers and Others**

617.7130 Investigation.

617.7140 Types of violations.

617.7150 Reporting of violations.

617.7160 Cases for referral.

617.7170 Notice to local police and bonding company.

AUTHORITY: Secs. 5.9, 5.17(a)(10); 12 U.S.C. 2243, 2252(a)(10).

SOURCE: 37 FR 11440, June 7, 1972, unless otherwise noted.

**Subpart A—[Reserved]**

**Subpart B—Investigations—Personnel**

**§617.7110 Reporting of violations.**

Violations or possible violations of Federal criminal statutes involving the banks and associations shall be immediately reported to the president of the bank and the attorney or other person designated by the bank for that purpose. The violation or possible violation shall then be promptly reported to the Farm Credit Administration.

(a) If any bank or association employee or director discovers irregularities in the funds and accounts of a bank or association, or has reasonable grounds for belief that Federal criminal statutes may have been violated, the employee or director shall report the matter to the appropriate officer of the bank and furnish such information as he has obtained or developed.

(b) The bank shall immediately notify the Chief Examiner of the Farm Credit Administration, and make available all information concerning the matter. The Chief Examiner will advise the bank what further steps, if any, should be taken by the representative in the case.